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No. 02-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2002

REPUBLICAN NATIONAL COMMITTEE, ET AL.,

Appellants,

v.

FEDERAL ELECTION COMMISSION, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Do the restrictions imposed upon national, state, and local political parties by Title I of the Bipartisan Campaign Reform Act of 2002 ("BCRA") violate Article I, Section 4 of the U.S. Constitution, the First, Fifth, and Tenth Amendments, and principles of federalism?

2. Does BCRA's requirement that the Federal Election Commission promulgate a definition of "coordination" that does not require proof of an "agreement" violate the First Amendment?

3. Do BCRA's "Millionaires Provisions," which requires political parties to provide different treatment to similarly situated candidates, violate the equal protection components of the First and Fifth Amendments?

PARTIES TO THE PROCEEDING

Appellants represented in this Jurisdictional Statement are the Republican National Committee ("RNC"); Robert Michael Duncan, former Treasurer, current General Counsel, and Member of the RNC; the Republican Party of Colorado; the Republican Party of New Mexico; the Republican Party of Ohio; and the Dallas County (Iowa) Republican County Central Committee (collectively, the "RNC Appellants"). All of the RNC Appellants were plaintiffs below, in *Republican National Committee v. FEC*, No. 02-874, which was consolidated by the district court around *McConnell v. FEC*, No. 02-582, along with nine other related actions.

The following were also plaintiffs in the consolidated actions below, including several who withdrew before the three-judge court issued its opinion:

McConnell v. FEC, No. 02-582: United States Senator Mitch McConnell, United States Representative Mike Pence and former Representative Bob Barr, Alabama Attorney General Bill Pryor, Libertarian National Committee, Inc., Alabama Republican Executive Committee (withdrawn), Libertarian Party of Illinois, Inc. (withdrawn), DuPage Political Action Council (withdrawn), Jefferson County Republican Executive Committee (withdrawn), American Civil Liberties Union, Associated Builders and Contractors, Inc., Associated Builders and Contractors Political Action Committee, Center for Individual Freedom, Christian Coalition of America, Inc. (withdrawn), Club for Growth, Indiana Family Institute, National Right to Life Committee, Inc., National Right to Life Educational Trust Fund, National Right to Life Political Action Committee, National Right to Work Committee, 60-Plus Association, Inc., Southeastern Legal Foundation, Inc., U.S. English d/b/a/

ProENGLISH, Martin Connors (withdrawn), Thomas McInerney, Barrett Austin O'Brock, Trevor Southerland.

National Rifle Ass'n v. FEC, No. 02-581: National Rife Association of America ("NRA"), NRA Political Victory Fund.

Echols v. FEC, No. 02-633: Emily Echols, Hannah McDow, Jessica Mitchell, Daniel Solid, Zachary White, Reverend Patrick Mahoney.

Chamber of Commerce v. FEC, No. 02-751: Chamber of Commerce of the United States, U.S. Chamber Political Action Committee, National Association of Manufacturers, National Association of Wholesaler-Distributors (withdrawn).

National Ass'n of Broadcasters v. FEC, No. 02-753: National Association of Broadcasters.

AFL-CIO v. FEC, No. 02-754: AFL-CIO, AFL-CIO Committee on Political Education and Political Contributions.

Paul v. FEC, No. 02-781: United States Congressman Ron Paul, Gun Owners of America, Inc., Gun Owners of America Political Victory Fund, Realcampaignreform.org, Citizens United, Citizens United Political Victory Fund, Michael Cloud, Clara Howell.

California Democratic Party v. FEC, No. 02-875; California Democratic Party, Art Torres, Yolo County Democratic Central Committee, California Republican Party, Shawn Steel, Timothy Morgan, Barbara Alby, Santa Cruz County Republican Central Committee, Douglas Boyd, Jr.

Adams v. FEC, No. 02-877: Victoria Jackson Gray Adams, Carrie Bolton, Cynthia Brown, Derek Cressman, Victoria Fitzgerald, Anurada Joshi, Peter Kostmayer, Nancy Russell, Kate Seely-Kirk, Rose Taylor, Stephanie Wilson, California Public Interest Research Group ("PIRG"), Massachusetts PIRG, New Jersey PIRG, United States PIRG, The Fannie Lou Hamer Project, Association of Community Organizers for Reform Now.

Thompson v. FEC, No. 02-881: United States Representatives Bennie Thompson and Earl Hilliard.

Appellee Federal Election Commission ("FEC"), which filed a Notice of Appeal on May 2, 2003, was a defendant below in the Complaint filed by the RNC Appellants. Appellees United States Department of Justice ("DOJ"), United States Senators John McCain, Russell Feingold, Olympia Snowe, and James Jeffords, and United States Representatives Martin Meehan and Christopher Shays were defendant-intervenors below. They filed Notices of Appeal on May 5, 2003. Additional defendants named by other plaintiffs in the consolidated actions below were: the Federal Communications Commission, Attorney General of the United States John Ashcroft, and the United States of America, who filed a Notice of Appeal on May 5, 2003; and FEC Commissioners David Mason, Karl Sandstrom (since replaced by Ellen Weintraub), Danny McDonald, Bradley Smith, Scott Thomas, and Darryl Wold (since replaced by Michael Toner), who filed a Notice of Appeal on May 12, 2003.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinions of the district court are reported at 2003 WL 2010983, 21003118, 21003103, and 21003124 (D.D.C. May 1, 2003). Pursuant to the Court's Order of May 15, 2003, RNC Appellants anticipate filing a jointly prepared appendix containing the opinions of the district court.

JURISDICTION

The decision of the district court was issued on May 2, 2003, by a three-judge court convened pursuant to 28 U.S.C. § 2284 and Section 403(a)(1) of the Bipartisan Campaign Reform Act of 2002, Pub. Law No. 107-155, 116 Stat. 81 ("BCRA"). The RNC Appellants filed their Notice of Appeal from the decision of the three-judge court on May 7, 2003. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1253 and Section 403(a)(3) of BCRA.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 4 of the United States Constitution provides in pertinent part:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators. . . .

The First Amendment to the United States Constitution provides in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to

> petition the Government for a redress of grievances.

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law. . . .

The Tenth Amendment to the United States Constitution provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The full text of BCRA is reprinted at App. 3a-77a.

STATEMENT OF THE CASE

BCRA was signed into law on March 27, 2002, and became effective on November 6, 2002. Although BCRA's provisions are divided among five titles, the RNC Appellants chiefly challenge Title I, which targets political parties.

The Statute at Issue

For the first time in American history, Congress has, through Title I of BCRA, attempted to regulate the activities of political parties that affect only state and local elections. New Federal Election Campaign Act ("FECA") Section 323(a), created by Section 101(a) of BCRA, broadly and with no exceptions prohibits the RNC and other national political party committees from soliciting, receiving, directing, transferring, or spending "any funds" that do not fully comply with FECA. This is the so-called "soft money ban"

touted by proponents as the centerpiece of the statute.[1] To take but one example, Section 323(a) makes it a felony for the Chairman of the RNC to send a fundraising letter on behalf of a gubernatorial candidate.

Whereas Section 323(a) is an all-encompassing prohibition with no exceptions, new Section 323(b) is a convoluted -- and unsuccessful -- attempt to avoid trespassing on state sovereignty while imposing extensive federal regulation on state and local political parties. It prohibits state and local parties from using state-regulated funds for so-called "federal election activities," but then broadly defines "federal election activities" to sweep in

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[1] The slang term "soft money" generally refers to funds that are regulated by *state* law; by contrast, "hard money" generally refers to funds regulated by the Federal Election Campaign Act of 1971, 2 U.S.C. §§431 *et seq.* ("FECA"). As the FEC itself has recognized, the term "soft money" is pejorative and misleading. The RNC Appellants therefore refer instead to "non-federal" (soft) and "federal" (hard) money. *See* Explanation & Justification, *Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule*, 67 Fed. Reg. 49064, 49065 (July 29, 2002) ("Because the term 'soft money' is used by different people to refer to a wide variety of funds under different circumstances, the Commission is using the term 'non-Federal funds' in the final rules rather than the term 'soft money.' . . . Moreover, non-Federal funds are regulated by State law."). All members of the three-judge district court expressly adopted this same convention. *See Per Curiam* Op. (Kollar-Kotelly, J.; Leon, J.) at 32 n. 9; Op. of Henderson, J. at 30 n. 30. The Government's jurisdictional statement, filed on May 12, 2003, mistakenly asserts that "soft money" is "money raised outside the framework of [FECA's] disclosure requirements." FEC Jurisdictional Statement, at 5. To the contrary, beginning in 1991, the FEC required that national party committees fully disclose donations of nonfederal funds, and the RNC Appellants have not challenged those disclosure provisions.

activities wholly or largely in connection with state and local elections. As an exception to this broad rule, and in an explicit effort to avoid federalism concerns, Section 323(b) allows state and local parties to fund certain "federal election activities" in part with so-called "Levin money" (pursuant to an amendment by Senator Levin), but this Levin money is, in turn, subject to extensive federal regulation.

Even with all its purported attempts to accommodate state sovereignty, Section 323(b) subjects many purely local political activities to full federal regulation. As but one example, it would prohibit two local political party committees from pooling their funds to pay for a get-out-the-vote drive for a candidate for *county school board*, if the election takes place in an even-numbered year when federal candidates are on the ballot, unless the local parties pay for it with 100% federally regulated money. *See* Section 323(b)(2)(B)(iv) (the "home grown" requirement).

Other BCRA provisions affecting political parties also abridge fundamental constitutional rights. New Section 213 requires all components of a political party, acting collectively, to choose between making independent expenditures authorized by the First Amendment and coordinated expenditures authorized by FECA. New Section 214 instructs the FEC to repeal its existing regulations distinguishing "independent" activity from "coordinated" activity in a manner that will suppress protected speech and associations. New Sections 304 and 319, the so-called "Millionaire's Provisions," effectively punish any Senate or House candidate who uses more than specified amounts of personal assets to fund his or her campaign.

The Court Challenge

Recognizing that BCRA raises serious constitutional issues, Congress required that any constitutional challenge to its provisions be heard by a three-judge court, with a direct

appeal to this Court. *See* BCRA §§ 403(a)(1), (3). Congress, the three-judge court below, and all of the parties anticipate final review of BCRA by this Court.

Congress therefore specified that "[i]t shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the *greatest possible extent* the disposition of the action and appeal." BCRA § 403(a)(4) (emphasis added).

The RNC Appellants filed their complaint on May 7, 2002. As the only major national political party committee to challenge the statute, the RNC is the litigant most directly and significantly injured by Section 323(a).[2] The uncontradicted record establishes, and two judges expressly found as fact, that in the 1999 and 2001 off-year elections, *when no federal candidates were on the ballot*, the RNC spent $21 million of nonfederal money (not counting staff salaries and overhead) on purely state and local elections with no conceivable effect on federal elections. *See* Op. of Henderson, J., at 151, Findings ¶ 71(c)(2)(B); Op. of Leon, J. at 152, Findings ¶ 59. Despite the absence of any conceivable effect on a federal election, Section 323(a) criminalizes this activity.

The Republican State Parties of Colorado, New Mexico, and Ohio, which have widely divergent state campaign statutes, joined the RNC to challenge Section 323(b). The uncontradicted evidence establishes, and two judges found as fact, that state parties focus a majority of

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[2] None of the ten other lawsuits includes a major national political party committee as a plaintiff, and only the *California Democratic Party* suit includes state or local political parties. The interests of the RNC Appellants therefore are not directly represented by any of the other consolidated lawsuits.

their resources on state and local elections, *see* Op. of Henderson, J. at 164-68, Finding ¶ 73; Op. of Leon, J. at 169, Finding ¶ 113, and that they rely heavily upon transfers of nonfederal funds from national party committees to support these state party operations. *See* Op. of Henderson, J. at 156-58, Finding ¶ 71(e); Op. of Leon, J. at 160-61, Finding ¶ 88.

The RNC Appellants also challenged several other provisions. Section 213 requires all elements of a political party -- local, state, and national -- to choose between making independent and coordinated expenditures. This provision illegitimately attempts to overrule *Colorado Republican Federal Campaign Committee* v. *FEC*, 318 U.S. 604 (1996), which recognized the First Amendment-protected rights of political parties to make independent expenditures. Section 214 attempts, in disregard of First Amendment jurisprudence, to expand the concept of "coordination" to encompass conduct that is truly independent of a candidate. Sections 304 and 319, the so-called "Millionaire's Provisions," attempt to punish candidates who exercise their First Amendment-protected rights to spend their own resources; these provisions do so by raising opponents' contribution limits and eliminating the limits on political party coordinated expenditures in support of their opponents.

The District Court Decision

The district court issued its decision on May 2, 2003. Each member of the three-judge court authored a separate opinion and findings of fact. Judges Kollar-Kotelly and Leon also joined a *per curiam* opinion with accompanying findings of fact largely devoted to addressing BCRA's disclosure provisions, which the RNC Appellants do not challenge.

With regard to Title I, Judges Henderson and Leon agreed that Sections 323(a), (b), and (c) could not stand as written. Because BCRA's extensive restrictions on political

party speech and association cannot properly be deemed a mere "contribution limit," Judge Henderson applied strict scrutiny. She found as fact, *inter alia*, that the RNC engages in very substantial activities that have no effect on federal elections, such as participation in state and local "off-year" elections when there are no federal candidates on the ballot. Op. of Henderson, J. at 150-52, Findings ¶¶ 71(c), 71(c)(2). She further found, *inter alia*, that state parties engage in considerable voter registration, get-out-the-vote, and other activities exclusively or primarily to affect state and local elections. Op. Henderson, J. at 172-75, Findings ¶ 76. Concluding that neither Section 323(a) nor 323(b) is narrowly tailored to serve a compelling interest of the federal government, Judge Henderson would have struck both down. Likewise, she would have struck down on First Amendment grounds Section 323(d), prohibiting political parties from donating funds to certain tax-exempt organizations, and Section 323(f), restricting state candidates' use of non-federal funds for "public communications" that refer to a federal candidate. She joined Judge Kollar-Kotelly, however, in concluding that Section 323(e), which imposes restrictions on federal candidates, is constitutional.

Judge Leon analyzed Title I under "intermediate scrutiny," but -- based on findings of fact similar or identical to Judge Henderson's -- concluded that Sections 323(a) and 323(b) were not "closely drawn" to achieve an important federal government objective. *See* Op. of Leon, J. at 26-37, 45-50. Nevertheless, in an effort to salvage part of the statute, Judge Leon limited the application of Section 323(a) by borrowing Section 323(b)'s definition of "federal election activity" and grafting it onto Section 323(a). Op. of Leon, J. at 37-43. Then, he ruled that the definition of "federal election activity" in new Section 301(20) was itself overbroad, but judicially limited that definition, for purposes of both Sections 323(a) and 323(b), to a "public

communication that refers to a clearly identified candidate for federal office and that promotes or supports . . . or attacks or opposes" a federal candidate, Section 301(20)(A)(iii). Op. of Leon, J. at 37-43, 45-50. Because it invalidated less of these sections than Judge Henderson's disposition, Judge Leon's disposition of Sections 323(a) and 323(b) prevailed. Thus, Sections 323(a) and (b) survive only to the extent of prohibiting political parties from publishing any "public communications" supporting or opposing a federal candidate. Like Judge Henderson, Judge Leon voted to strike down Section 323(d)'s restrictions on political party donations to tax-exempt organizations. Op. of Leon, J. at 68-71. Judge Leon joined Judge Kollar-Kotelly in upholding the restrictions on state candidates in Section 323(f). He dissented from the panel's ruling to uphold the restrictions on federal candidates in Section 323(e).

Judge Kollar-Kotelly would have upheld Title I in its entirety, joining Judge Henderson with regard to Section 323(e)'s restrictions on federal candidates and Judge Leon with regard to Section 323(f)'s restrictions on state candidates. In voting to uphold Sections 323(a), (b), and (d), she deemed all of Title I a "contribution limit" that was subject to intermediate scrutiny. Finding that *all* political party activity covered by those provisions -- even such national party expenditures as legal expenses incurred for *state* legislative redistricting[3] -- affected federal elections, she

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[3] Judge Kollar-Kotelly reasoned that state *legislative* redistricting may eventually affect state *congressional* redistricting, which in turn may eventually affect a federal election. *See* Op. of Kollar-Kotelly, J. at 67, Findings ¶¶ 1.34, 1.34.3. Thus, she concluded, disbursements on state legislative redistricting could properly be regulated by the federal government. Judge Kollar-Kotelly also acknowledged the expenditure of $21 million of non-federal funds by the RNC during the 1999 and 2001 off-year state and local elections in which no federal candidates appeared (continued...)

concluded that the restrictions were "closely drawn" to serve the important federal interest in preventing the appearance of officeholder corruption.

Finally, the three-judge court unanimously struck down on First Amendment grounds Section 213, in which Congress sought to compel political parties to choose between making independent or coordinated expenditures to support their candidates. The court likewise held challenges to Section 214 (requiring the FEC to adopt an overbroad definition of "coordination") and Sections 304 and 319 (the "Millionaire's Provisions") to be nonjusticiable. Judge Henderson would have struck down Section 214 on First Amendment grounds.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

As the district court recognized in striking down much of Title I, BCRA as enacted would severely restrict the traditional associational activities of political parties and suppress core party speech, in violation of the First Amendment. The record so firmly establishes BCRA's harmful effect on the parties that the district court reached

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on the ballot (Op. of Kollar-Kotelly, J. at 74, Finding ¶ 1.39.1.2), the solicitation during off-year elections by RNC employees of non-federal funds for state candidates and parties, Op. of Kollar-Kotelly, J. at 106, Findings ¶ 159, and national party cooperation with state and local parties in full ticket voter registration and mobilization efforts, Op. of Kollar-Kotelly, J. at 77, Findings ¶¶ 143.2, 143.2.1. Nevertheless, Judge Kollar-Kotelly deemed national party involvement in state and local elections to be insignificant, and concluded that such activities by national political parties are subject to full federal regulation. Op. of Kollar-Kotelly, J. at 72-73, Finding ¶ 1.39.

this judgment even though two of the three judges erred by applying intermediate rather than strict scrutiny.

The limitations on speech and association tell only part of the story, however. As enacted, BCRA would also effect an unprecedented expansion of federal authority over the electoral processes of sovereign state governments. Further, by imposing unique and oppressive restrictions on political parties in relation to politically active special interest groups such as labor unions, corporations, and trade associations, BCRA would weaken political parties while empowering single-issue groups that, unlike broad-based political parties, promote factions and instability rather than moderation and mediation among diverse constituencies and extreme views. *See* Op. of Henderson J., at 145-47 (Finding ¶ 70), 176-78 (Finding ¶ 79). For all these reasons, this Court should note probable jurisdiction to review the district court's decision insofar as it failed to strike down Title I in its entirety.

I. Title I Is Unconstitutional in Its Entirety.

A. The Constitution Does Not Empower Congress To Regulate State and Local Elections.

The Constitution does not enumerate any power of Congress to regulate state and local elections. Although Congress did not specify the enumerated power upon which it enacted BCRA, in *Buckley* v. *Valeo*, 424 U.S. 1 (1976), this Court treated the FECA, to which BCRA is an amendment, as a product of Congress's power under the Federal Elections Clause, U.S. CONST. Art. I, § 4. *See Buckley*, 424 U.S. at 13 & n.16. The Federal Elections Clause has never been interpreted to afford Congress the power to regulate purely state and local election activity, however. To the contrary, this Court has recognized that the power to regulate state and local elections is reserved by the

Constitution to the states. *See Oregon* v. *Mitchell*, 400 U.S. 112, 135 (1970) (controlling op. of Black, J.) ("[o]ur judgments . . . save for the States the power to control state and local elections which the Constitution originally reserved to them and which no subsequent amendment has taken from them."); *Tashjian* v. *Republican Party of Conn.*, 479 U.S. 208, 217 (1986) ("[T]he Constitution grants to the States a broad power to prescribe the 'Times, Places, and Manner of holding Elections for Senators and Representatives,' Art. I, § 4, cl. 1, *which power is matched by state control over the election process for state offices.*") (emphasis added). Accordingly, the Federal Elections Clause does not support, and affirmatively precludes, BCRA's extraordinary assertion of federal power over the regulation of state and local elections.

B. Title I of BCRA Denies Political Parties Equal Protection of the Laws.

As enacted, BCRA also denies political parties equal protection of the laws by subjecting them to unique restraints on speech not imposed upon special interest groups. *See Clark* v. *Jeter*, 486 U.S. 456, 461 (1988) ("Classifications . . . affecting fundamental rights are given the most exacting scrutiny."); *Police Dep't of the City of Chicago* v. *Mosley*, 408 U.S. 92, 101 (1972) ("The Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives."). Yet, as the record in this case makes clear, special interest groups seek to perform most if not all of the same activities political parties perform, and they do so using nonfederal money for the purpose of currying favor with federal officeholders. *See* Op. of Henderson, J., at 177-80 (Finding ¶ 79(c)), 276 (citing defense expert Paul Herrnson). Accordingly, special interest groups enjoy preferential treatment under BCRA even though they do not share the parties' beneficial role as buffers between donors and officeholders.

C. Title I of BCRA Violates Political Parties' Rights to Free Speech and Association.

Title I restricts political parties' freedom to engage in pure speech and a wide range of associational activities that are essential to their ability to function effectively. Judges Leon and Kollar-Kotelly incorrectly characterized Title I as imposing a mere contribution limit subject to intermediate review under *Buckley* v. *Valeo*, 424 U.S. 1 (1976). *See* Op. of Leon, J. at 14; Op. of Kollar-Kotelly at 480. Title I, by restricting pure speech and free association, simply does not fit into *Buckley*'s "contribution" versus "expenditure" dichotomy, however.

As enacted, Title I proscribed solicitation of non-federal funds by national party committees. Thus, it is a felony for the Chairman of the RNC to solicit a $50 contribution to a gubernatorial, mayoral, or even school board candidate. *See* Section 323(a)(1)-(2) (proscribing officer of national party from "solicit[ing]" any nonfederal donation).[4] This Court has subjected restrictions on solicitation to strict scrutiny, observing -- as the record here confirms -- that solicitation "is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues." *Schaumburg* v. *Citizens for a Better Environment*, 444 U.S. 620, 632 (1980).

Moreover, Title I regulates, *inter alia*, the *spending* of nonfederal funds. Indeed, Judge Leon's controlling opinion

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[4] Defendants argued below that the RNC Chairman could solicit *federal* money for these state and local candidates. But money raised by state and local candidates is not "subject to the limitations, prohibitions, and reporting requirements" of FECA; it is subject to "the limitations, prohibitions, and reporting requirements" of *state* law, and is thus "nonfederal money."

rewrites Title I to regulate *only* the spending of non-federal funds on certain "public communications" and does not limit the ability of national, state, or local parties to receive donations of non-federal funds. Under *Buckley* and its progeny, such a limit on independent spending of funds that were raised legally is subject to strict scrutiny and is impermissible because it bears no relationship to any effort to prevent corruption or the appearance of corruption.

Further, Title I has the practical effect of interfering with core political party association. Even in years like 2003 when there are no federal candidates on the ballot, Title I severely inhibits the ability of national parties to work with their state and local counterparts on full-ballot voter registration and mobilization plans, called "Victory Plans" by the Republicans and "Coordinated Campaigns" by the Democrats. *See* Op. of Henderson, J. at 158-60, Findings ¶ 71(f)(3); Op. of Leon, J. at 27 n.32, Findings ¶¶ 93-99. It restricts the ability of local parties in even-numbered years to pool their state-regulated funds for purely state and local political activities. *See* Section 323(b)(2)(B)(iv) (the "home grown" requirement). It restricts the ability of political parties to associate with certain ideologically-aligned tax-exempt groups, and with federal candidates and officeholders. *See* Sections 323(d), (e).

In short, Title I is far more than a mere contribution limit, and characterization of it as such is serious error. As this Court observed in *FEC* v. *National Conservative Political Action Committee*, 470 U.S. 480, 501 (1985), "[w]e are not quibbling over fine-tuning of prophylactic limitations, but are concerned about wholesale restriction of clearly protected conduct."

Judge Leon's attempt to salvage Section 323(a) -- the ban on national party use of nonfederal funds -- by grafting onto it a modified version of the definition of "federal election activity" drawn from elsewhere in the statute cannot

be sustained. The language of Section 323(a) is clear and categorical. *See* BCRA § 323(a) ("A national committee of a political party . . . may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or *any* other thing of value, or spend *any* funds that are not subject to the limitations, prohibitions, and reporting requirements" of the FECA.) (emphasis added). Congress's categorical language mirrors the legislative history, which makes clear the Congressional intent to "put the national parties entirely out of the soft money business." 148 Cong. Rec. H408-09 (daily ed. Feb. 13, 2002) (Stmt. of Rep. Shays). Congress contemplated no exceptions, and indeed expressly rejected various less restrictive alternatives that fell short of an absolute ban. Neither the language nor the legislative history of Section 323(a) can reasonably be construed to support the construction adopted for it by Judge Leon. *See Aptheker* v. *Secretary of State*, 378 U.S. 500, 515 (1964) ("The clarity and preciseness of the provision in question make it impossible to narrow its indiscriminately cast and overly broad scope without substantial rewriting.").

Moreover, even as limited by the district court, Sections 323(a) and 323(b) impose an unjustifiable restriction on political party speech. National, state, and local political parties are still prohibited, under threat of criminal prosecution, from using nonfederal money for any "public communication" -- print, broadcast, mail, telephone bank, or billboard -- that "refers to" a federal candidate and, in the eyes of a zealous prosecutor, "promotes," "supports," "attacks," or "opposes" that candidate. *See* new Section 301(22) (defining "public communication"). In other words, a flyer that is almost entirely devoted to advocating the election of the Party's *gubernatorial* candidate, but which refers to a Member of Congress's endorsement of that candidate, must be paid for entirely with federal funds. This restriction is even broader than the vague and overbroad

restrictions on special interest groups in Title II that were upheld by the district court. Those restrictions on interest groups apply only to *broadcast* advertisements aired so as to reach the *relevant electorate*.

II. BCRA Imposes a Definition of "Coordination" that Violates the First Amendment.

Section 214 of BCRA repeals the FEC's existing regulations defining when an expenditure is deemed to be "coordinated" with a candidate and therefore treated as an "in-kind" contribution under FECA. *See* Section 214(b). It provides that the FEC must adopt a new definition of coordination that "shall not require agreement or formal collaboration to establish coordination." Section 214(c). Because political parties enjoy a First Amendment right to make unlimited "independent expenditures," *see Colorado Republican Fed. Campaign Comm.* v. *FEC*, 518 U.S. 604 (1996) ("*Colorado Republican I*"), a higher threshold is required for coordination, in order not to chill the exercise of that right. *See Federal Election Comm'n* v. *Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 463 (2001) (treating "coordinated expenditures" as "potential alter egos for contributions"); *Colorado Republican I*, 518 U.S. at 619 (1996) (requiring proof of "actual coordination as a matter of fact"); *Federal Election Comm'n* v. *Christian Coalition*, 52 F. Supp.2d 45, 91 (D.D.C. 1999) ("First Amendment clarity demands a definition of 'coordination' that provides the clearest possible guidance to candidates and constituents").

The district court erroneously held that the RNC Appellants' constitutional challenge to Section 214 is not justiciable on standing and ripeness grounds. The RNC Appellants are directly injured by the broad definition of coordination required by Section 214 because it subjects their expenditures in support of candidates to the coordinated party expenditure limit even though the expenditures are in fact

truly independent as a matter of law. It also purports to make them responsible for independent expenditures by persons or entities with whom the parties have little if any relationship. Moreover, as Judge Henderson correctly noted in dissent, the challenge to Section 214 is ripe for review because "[Section] 214 will violate the First Amendment no matter what the [FEC] does, for no regulation it promulgates may depart . . . from the provision['s] plain text." Op. of Henderson, J. at 254.

III. BCRA's "Millionaire's Provisions" Deny Political Parties Equal Protection of the Laws.

Sections 304 and 319 of BCRA, the so-called "Millionaire's Provisions," lift certain restrictions otherwise applicable to candidates when they face wealthy opponents willing to spend personal assets on their campaigns. Among the restrictions that are lifted is the coordinated party expenditure limit. This means that the RNC would be permitted to make unlimited coordinated expenditures for *some* candidates while remaining subject to strict coordinated spending limits for *others*. The distinguishing characteristic mandated by statute is the ability and willingness of the candidate (or his or her opponent) to exercise the First Amendment-protected right to spend personal assets for a political campaign. *See Buckley*, 424 U.S. at 53-54 (expenditure from personal funds poses no threat of corruption, but rather "counteracts the coercive pressures and attendant risks of abuse to which the Act's contribution limits are directed.") Further, lifting the contribution limits and coordinated spending limits for candidates most in need of funds contradicts the basic rationale of preventing actual or apparent corruption advanced for all contribution limits. If anything, the candidates favored by the Millionaire's Provisions would be more, not less, susceptible to the asserted corruption.

The district court held that the RNC Appellants lack standing to challenge the Millionaire's Provisions because none of the RNC Appellants are federal candidates. The Millionaire's Provisions directly restrict the speech of political parties as well as candidates, however, by requiring parties to spend less to support some similarly-situated candidates than others. It is no answer to say that the party may simply choose to spend at the lower level for all its candidates, since any First Amendment challenge could be cured if the challenger would simply accept the restrictions.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

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May 27, 2003

Counsel for RNC Appellants

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPUBLICAN NATIONAL COMMITTEE, et al.
Plaintiffs,
v.
FEDERAL ELECTION COMMISSION, et al.
Defendant.

Civ. No. 02-874

NOTICE OF APPEAL

Pursuant to Section 403(a)(3) of the Bipartisan Campaign Reform Act of 2002, Pub. Law No. 107-155, 116 Stat. 81 ("BCRA"), notice is hereby given that plaintiffs Republican National Committee, Robert Michael Duncan, Republican Party of Colorado, Republican Party of New Mexico, Republican Party of Ohio, and Dallas County (Iowa) Republican County Central Committee (the "RNC Plaintiffs"), hereby appeal to the United States Supreme Court from the Order of the three-judge Court entered in this action on May 2, 2003, failing to strike down in their entirety certain provisions of Titles I, II, and III of BCRA challenged by RNC Plaintiffs as unconstitutional. This notice is timely submitted within 10 days of entry of the aforementioned Order. See BCRA § 403(a)(3).

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May 7, 2003

PUBLIC LAW 107-155 (HR 2356)

March 27, 2002

BIPARTISAN CAMPAIGN REFORM ACT OF 2002

An Act

To amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 USCA § 431 NOTE

(a) SHORT TITLE.–This Act may be cited as the "Bipartisan Campaign Reform Act of 2002".

(b) TABLE OF CONTENTS.–The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I–REDUCTION OF SPECIAL INTEREST INFLUENCE

Sec. 101. Soft money of political parties.
Sec. 102. Increased contribution limit for State committees of political parties.
Sec. 103. Reporting requirements.

TITLE II–NONCANDIDATE CAMPAIGN EXPENDITURES

Subtitle A–Electioneering Communications

Sec. 201. Disclosure of electioneering communications.
Sec. 202. Coordinated communications as contributions.
Sec. 203. Prohibition of corporate and labor disbursements for electioneering communications.
Sec. 204. Rules relating to certain targeted electioneering communications.

Subtitle B–Independent and Coordinated Expenditures

Sec. 211. Definition of independent expenditure.
Sec. 212. Reporting requirements for certain independent expenditures.
Sec. 213. Independent versus coordinated expenditures by party.
Sec. 214. Coordination with candidates or political parties.

TITLE III–MISCELLANEOUS

Sec. 301. Use of contributed amounts for certain purposes.
Sec. 302. Prohibition of fundraising on Federal property.
Sec. 303. Strengthening foreign money ban.
Sec. 304. Modification of individual contribution limits in response to expenditures from personal funds.
Sec. 305. Limitation on availability of lowest unit charge for Federal candidates attacking opposition.
Sec. 306. Software for filing reports and prompt disclosure of contributions.
Sec. 307. Modification of contribution limits.
Sec. 308. Donations to Presidential inaugural committee.
Sec. 309. Prohibition on fraudulent solicitation of funds.
Sec. 310. Study and report on clean money clean elections laws.
Sec. 311. Clarity standards for identification of sponsors of election-related advertising.
Sec. 312. Increase in penalties.
Sec. 313. Statute of limitations.
Sec. 314. Sentencing guidelines.
Sec. 315. Increase in penalties imposed for violations of conduit contribution ban.
Sec. 316. Restriction on increased contribution limits by taking into account candidate's available funds.
Sec. 317. Clarification of right of nationals of the United States to make political contributions.
Sec. 318. Prohibition of contributions by minors.
Sec. 319. Modification of individual contribution limits for House candidates in response to expenditures from personal funds.

TITLE IV–SEVERABILITY; EFFECTIVE DATE
Sec. 401. Severability.
Sec. 402. Effective dates and regulations.
Sec. 403. Judicial review.

TITLE V–ADDITIONAL DISCLOSURE PROVISIONS
Sec. 501. Internet access to records.
Sec. 502. Maintenance of website of election reports.
Sec. 503. Additional disclosure reports.
Sec. 504. Public access to broadcasting records.

TITLE I–REDUCTION OF SPECIAL INTEREST INFLUENCE

SEC. 101. SOFT MONEY OF POLITICAL PARTIES.

2 USCA § 441i

(a) IN GENERAL.–Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following:

SEC. 323. SOFT MONEY OF POLITICAL PARTIES.

(a) NATIONAL COMMITTEES.–

(1) IN GENERAL.–A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

(2) APPLICABILITY.–The prohibition established by paragraph (1) applies to any such national committee, any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee.

(b) STATE, DISTRICT, AND LOCAL COMMITTEES.–

(1) IN GENERAL.–Except as provided in paragraph (2), an amount that is expended or disbursed for Federal election activity by a State, district, or local committee of a political party (including an entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party and an officer or agent acting on behalf of such committee or entity), or by an association or similar group of candidates for State or local office or of individuals holding State or local office, shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

(2) APPLICABILITY.–

(A) IN GENERAL.–Notwithstanding clause (i) or (ii) of section 301(20)(A), and subject to subparagraph (B), paragraph (1) shall not apply to any amount expended or disbursed by a State, district, or local committee of a political party for an activity described in either such clause to the extent the amounts expended or disbursed for such activity are allocated (under regulations prescribed by the Commission) among amounts–

(i) which consist solely of contributions subject to the limitations, prohibitions, and reporting requirements of this Act (other than amounts described in subparagraph (B)(iii)); and

(ii) other amounts which are not subject to the limitations, prohibitions, and reporting requirements of this Act (other than any requirements of this subsection).

(B) CONDITIONS.–Subparagraph (A) shall only apply if–

(i) the activity does not refer to a clearly identified candidate for Federal office;

(ii) the amounts expended or disbursed are not for the costs of any broadcasting, cable, or satellite communication, other than a communication which refers solely to a clearly identified candidate for State or local office;

(iii) the amounts expended or disbursed which are described in subparagraph (A)(ii) are paid from amounts which are donated in accordance with State law and which meet the requirements of subparagraph (C), except that no person (including any person established, financed, maintained, or controlled by such person) may donate more than $10,000 to a State, district, or local committee of a political party in a calendar year for such expenditures or disbursements; and

(iv) the amounts expended or disbursed are made solely from funds raised by the State, local, or district committee which makes such expenditure or disbursement, and do not include any funds provided to such committee from–

(I) any other State, local, or district committee of any State party,

(II) the national committee of a political party (including a national congressional campaign committee of a political party),

(III) any officer or agent acting on behalf of any committee described in subclause (I) or (II), or

(IV) any entity directly or indirectly established, financed, maintained, or controlled by any committee described in subclause (I) or (II).

(C) PROHIBITING INVOLVEMENT OF NATIONAL PARTIES, FEDERAL CANDIDATES AND OFFICEHOLDERS, AND STATE PARTIES ACTING JOINTLY.–Notwithstanding subsection (e) (other than subsection (e)(3)), amounts specifically authorized to be spent under subparagraph (B)(iii) meet the requirements of this subparagraph only if the amounts–

(i) are not solicited, received, directed, transferred, or spent by or in the name of any person described in subsection (a) or (e); and

(ii) are not solicited, received, or directed through fundraising activities conducted jointly by 2 or more State, local, or district committees of any political party or their agents, or by a State, local, or district committee of a political party on behalf of the State, local, or district committee of a political party or its agent in one or more other States.

(c) FUNDRAISING COSTS.–An amount spent by a person described in subsection (a) or (b) to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

(d) TAX-EXEMPT ORGANIZATIONS.–A national, State, district, or local committee of a political party (including a national congressional campaign committee of a political party), an entity that is directly or indirectly

established, financed, maintained, or controlled by any such national, State, district, or local committee or its agent, and an officer or agent acting on behalf of any such party committee or entity, shall not solicit any funds for, or make or direct any donations to–

(1) an organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) and that makes expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity); or

(2) an organization described in section 527 of such Code (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

(e) FEDERAL CANDIDATES.–

(1) IN GENERAL.–A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not–

(A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act; or

(B) solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in

connection with such an election unless the funds–

(i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of section 315(a); and

(ii) are not from sources prohibited by this Act from making contributions in connection with an election for Federal office.

(2) STATE LAW.–Paragraph (1) does not apply to the solicitation, receipt, or spending of funds by an individual described in such paragraph who is or was also a candidate for a State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both.

(3) FUNDRAISING EVENTS.–Notwithstanding paragraph (1) or subsection (b)(2)(C), a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.

(4) PERMITTING CERTAIN SOLICITATIONS.–

(A) GENERAL SOLICITATIONS.–Notwithstanding any other provision of this subsection, an individual described in paragraph (1) may make a general solicitation of funds on behalf of any organization that is described in section 501(c) of the Internal Revenue Code of

1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) (other than an entity whose principal purpose is to conduct activities described in clauses (i) and (ii) of section 301(20)(A)) where such solicitation does not specify how the funds will or should be spent.

(B) CERTAIN SPECIFIC SOLICITATIONS.–In addition to the general solicitations permitted under subparagraph (A), an individual described in paragraph (1) may make a solicitation explicitly to obtain funds for carrying out the activities described in clauses (i) and (ii) of section 301(20)(A), or for an entity whose principal purpose is to conduct such activities, if–

(i) the solicitation is made only to individuals; and

(ii) the amount solicited from any individual during any calendar year does not exceed $20,000.

(f) STATE CANDIDATES.–

(1) IN GENERAL.–A candidate for State or local office, individual holding State or local office, or an agent of such a candidate or individual may not spend any funds for a communication described in section 301(20)(A)(iii) unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.

(2) EXCEPTION FOR CERTAIN COMMUNICATIONS.–Paragraph (1) shall not apply to an individual described in such paragraph if the communication involved is in connection with an election for such State or local office and refers only to such individual or to

any other candidate for the State or local office held or sought by such individual, or both.

2 USCA § 431

(b) DEFINITIONS.–Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) is amended by adding at the end thereof the following:

(20) FEDERAL ELECTION ACTIVITY.–

(A) IN GENERAL.–The term "Federal election activity" means–

(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;

(ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);

(iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

(iv) services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's

compensated time during that month on activities in connection with a Federal election.

(B) EXCLUDED ACTIVITY.–The term "Federal election activity" does not include an amount expended or disbursed by a State, district, or local committee of a political party for–

(i) a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) or (ii);

(ii) a contribution to a candidate for State or local office, provided the contribution is not designated to pay for a Federal election activity described in subparagraph (A);

(iii) the costs of a State, district, or local political convention; and

(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs, that name or depict only a candidate for State or local office.

(21) GENERIC CAMPAIGN ACTIVITY.–The term "generic campaign activity" means a campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate.

(22) PUBLIC COMMUNICATION.–The term "public communication" means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to

the general public, or any other form of general public political advertising.

(23) MASS MAILING.–The term "mass mailing" means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

(24) TELEPHONE BANK.–The term "telephone bank" means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period.

SEC. 102. INCREASED CONTRIBUTION LIMIT FOR STATE COMMITTEES OF POLITICAL PARTIES.

2 USCA § 441a

Section 315(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(1)) is amended–

(1) in subparagraph (B), by striking "or" at the end;

(2) in subparagraph (C)–

(A) by inserting "(other than a committee described in subparagraph (D))" after "committee"; and

(B) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following: "(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000."

SEC. 103. REPORTING REQUIREMENTS.

2 USCA § 434

(a) REPORTING REQUIREMENTS.–Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) is amended by adding at the end the following:

(e) POLITICAL COMMITTEES.–

(1) NATIONAL AND CONGRESSIONAL POLITICAL COMMITTEES.–The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

(2) OTHER POLITICAL COMMITTEES TO WHICH SECTION 323 APPLIES.–

(A) IN GENERAL.–In addition to any other reporting requirements applicable under this Act,

a political committee (not described in paragraph (1)) to which section 323(b)(1) applies shall report all receipts and disbursements made for activities described in section 301(20)(A), unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000.

(B) SPECIFIC DISCLOSURE BY STATE AND LOCAL PARTIES OF CERTAIN NON-FEDERAL AMOUNTS PERMITTED TO BE SPENT ON FEDERAL ELECTION ACTIVITY.–Each report by a political committee under subparagraph (A) of receipts and disbursements made for activities described in section 301(20)(A) shall include a disclosure of all receipts and disbursements described in section 323(b)(2)(A) and (B).

(3) ITEMIZATION.–If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3)(A), (5), and (6) of subsection (b).

(4) REPORTING PERIODS.–Reports required to be filed under this subsection shall be filed for the same time periods required for political committees under subsection (a)(4)(B).

(b) BUILDING FUND EXCEPTION TO THE DEFINITION OF CONTRIBUTION.–

(1) IN GENERAL.–Section 301(8)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)(B)) is amended–

(A) by striking clause (viii); and

(B) by redesignating clauses (ix) through (xv) as clauses (viii) through (xiv), respectively.

2 USCA § 453

(2) NONPREEMPTION OF STATE LAW.–Section 403 of such Act (2 U.S.C. 453) is amended–

(A) by striking "The provisions of this Act" and inserting "(a) IN GENERAL.–Subject to subsection (b), the provisions of this Act", and

(B) by adding at the end the following:

(b) STATE AND LOCAL COMMITTEES OF POLITICAL PARTIES.–Notwithstanding any other provision of this Act, a State or local committee of a political party may, subject to State law, use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act for the purchase or construction of an office building for such State or local committee.

TITLE II–NONCANDIDATE CAMPAIGN EXPENDITURES

Subtitle A–Electioneering Communications

SEC. 201. DISCLOSURE OF ELECTIONEERING COMMUNICATIONS.

2 USCA § 434

(a) IN GENERAL.–Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434), as amended by section 103, is amended by adding at the end the following new subsection:

(f) DISCLOSURE OF ELECTIONEERING COMMUNICATIONS.–

(1) STATEMENT REQUIRED.–Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in

an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

(2) CONTENTS OF STATEMENT.–Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

(A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

(B) The principal place of business of the person making the disbursement, if not an individual.

(C) The amount of each disbursement of more than $200 during the period covered by the statement and the identification of the person to whom the disbursement was made.

(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.

(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))) directly to this account for electioneering communications, the names and addresses of all contributors who

contributed an aggregate amount of $1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(3) ELECTIONEERING COMMUNICATION.–For purposes of this subsection–

(A) IN GENERAL.–(i) The term "electioneering communication" means any broadcast, cable, or satellite communication which–

(I) refers to a clearly identified candidate for Federal office;

(II) is made within–

(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term "electioneering communication" means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations.

(B) EXCEPTIONS.–The term "electioneering communication" does not include–

(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;

(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or

which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section 301(20)(A)(iii).

(C) TARGETING TO RELEVANT ELECTORATE.–For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is "targeted to the relevant electorate" if the communication can be received by 50,000 or more persons–

(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.

(4) DISCLOSURE DATE.–For purposes of this subsection, the term "disclosure date" means–

(A) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; and

(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date for such calendar year.

(5) CONTRACTS TO DISBURSE.–For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(6) COORDINATION WITH OTHER REQUIREMENTS.–Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

(7) COORDINATION WITH INTERNAL REVENUE CODE.–Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political campaign on behalf of or in opposition to any candidate for public office) for purposes of the Internal Revenue Code of 1986.

2 USCA § 434 NOTE

(b) RESPONSIBILITIES OF FEDERAL COMMUNICATIONS COMMISSION.–The Federal Communications Commission shall compile and maintain any information the Federal Election Commission may require to carry out section 304(f) of the Federal Election Campaign Act of 1971 (as added by subsection (a)), and shall make such information available to the public on the Federal Communication Commission's website.

SEC. 202. COORDINATED COMMUNICATIONS AS CONTRIBUTIONS.

2 USCA § 441a

Section 315(a)(7) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(7)) is amended–

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

(C) if–

(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 304(f)(3)); and

(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party; and.

SEC. 203. PROHIBITION OF CORPORATE AND LABOR DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS.

2 USCA § 441b

(a) IN GENERAL.–Section 316(b)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)(2)) is amended by inserting "or for any applicable electioneering communication" before ", but shall not include".

(b) APPLICABLE ELECTIONEERING COMMUNICATION.–Section 316 of such Act is amended by adding at the end the following:

(c) RULES RELATING TO ELECTIONEERING COMMUNICATIONS.–

(1) APPLICABLE ELECTIONEERING COMMUNICATION.–For purposes of this section, the term "applicable electioneering communication" means an electioneering communication (within the meaning of section 304(f)(3)) which is made by any entity described in subsection (a) of this section or by any other person using funds donated by an entity described in subsection (a) of this section.

(2) EXCEPTION.–Notwithstanding paragraph (1), the term "applicable electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) made under section 304(f)(2)(E) or (F) of this Act if the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))). For purposes of the preceding sentence, the term 'provided directly by individuals' does not include funds the source of which is an entity described in subsection (a) of this section.

(3) SPECIAL OPERATING RULES.–

(A) DEFINITION UNDER PARAGRAPH (1).–An electioneering communication shall be treated as made by an entity described in subsection (a) if an entity described in subsection (a) directly or indirectly disburses any amount for any of the costs of the communication.

(B) EXCEPTION UNDER PARAGRAPH (2).–A section 501(c)(4) organization that derives amounts from business activities or receives

funds from any entity described in subsection (a) shall be considered to have paid for any communication out of such amounts unless such organization paid for the communication out of a segregated account to which only individuals can contribute, as described in section 304(f)(2)(E).

(4) DEFINITIONS AND RULES.–For purposes of this subsection–

(A) the term "section 501(c)(4) organization" means–

(i) an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; or

(ii) an organization which has submitted an application to the Internal Revenue Service for determination of its status as an organization described in clause (i); and

(B) a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(5) COORDINATION WITH INTERNAL REVENUE CODE.–Nothing in this subsection shall be construed to authorize an organization exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 to carry out any activity which is prohibited under such Code.

2 USCA § 441b

SEC. 204. RULES RELATING TO CERTAIN TARGETED ELECTIONEERING COMMUNICATIONS.

Section 316(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b), as added by section 203, is amended by adding at the end the following:

(6) SPECIAL RULES FOR TARGETED COMMUNICATIONS.–

(A) EXCEPTION DOES NOT APPLY.–Paragraph (2) shall not apply in the case of a targeted communication that is made by an organization described in such paragraph.

(B) TARGETED COMMUNICATION.–For purposes of subparagraph (A), the term "targeted communication" means an electioneering communication (as defined in section 304(f)(3)) that is distributed from a television or radio broadcast station or provider of cable or satellite television service and, in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(C) DEFINITION.–For purposes of this paragraph, a communication is "targeted to the relevant electorate" if it meets the requirements described in section 304(f)(3)(C).

Subtitle B–Independent and Coordinated Expenditures

2 USCA § 431

SEC. 211. DEFINITION OF INDEPENDENT EXPENDITURE.

Section 301 of the Federal Election Campaign Act (2 U.S.C. 431) is amended by striking paragraph (17) and inserting the following:

(17) INDEPENDENT EXPENDITURE.–The term "independent expenditure" means an expenditure by a person–

(A) expressly advocating the election or defeat of a clearly identified candidate; and

(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.

SEC. 212. REPORTING REQUIREMENTS FOR CERTAIN INDEPENDENT EXPENDITURES.

(a) IN GENERAL.–Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) (as amended by section 201) is amended–

2 USCA § 434

(1) in subsection (c)(2), by striking the undesignated matter after subparagraph (C); and

(2) by adding at the end the following:

(g) TIME FOR REPORTING CERTAIN EXPENDITURES.–

(1) EXPENDITURES AGGREGATING $1,000.–

(A) INITIAL REPORT.–A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

(B) ADDITIONAL REPORTS.–After a person files a report under subparagraph (A), the person shall file an additional report within 24

hours after each time the person makes or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates.

(2) EXPENDITURES AGGREGATING $10,000.–

(A) INITIAL REPORT.–A person (including a political committee) that makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours.

(B) ADDITIONAL REPORTS.–After a person files a report under subparagraph (A), the person shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

(3) PLACE OF FILING; CONTENTS.–A report under this subsection–

(A) shall be filed with the Commission; and

(B) shall contain the information required by subsection (b)(6)(B)(iii), including the name of each candidate whom an expenditure is intended to support or oppose.

(b) TIME OF FILING OF CERTAIN STATEMENTS.–

(1) IN GENERAL.–Section 304(g) of such Act, as added by subsection (a), is amended by adding at the end the following:

(4) TIME OF FILING FOR EXPENDITURES AGGREGATING $1,000.–Notwithstanding subsection (a)(5), the time at which the statement under paragraph (1) is received by the Commission or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient.

2 USCA § 434

(2) CONFORMING AMENDMENTS.–(A) Section 304(a)(5) of such Act (2 U.S.C. 434(a)(5)) is amended by striking "the second sentence of subsection (c)(2)" and inserting subsection (g)(1).

(B) Section 304(d)(1) of such Act (2 U.S.C. 434(d)(1)) is amended by inserting "or (g)" after "subsection (c)".

SEC. 213. INDEPENDENT VERSUS COORDINATED EXPENDITURES BY PARTY.

Section 315(d) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(d)) is amended–

2 USCA § 441a

(1) in paragraph (1), by striking "and (3)" and inserting ", (3), and (4)"; and

(2) by adding at the end the following:

(4) INDEPENDENT VERSUS COORDINATED EXPENDITURES BY PARTY.–

(A) IN GENERAL.–On or after the date on which a political party nominates a candidate, no committee of the political party may make–

(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 301(17)) with respect to the candidate during the election cycle; or

(ii) any independent expenditure (as defined in section 301(17)) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

(B) APPLICATION.–For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State

committee) shall be considered to be a single political committee.

(C) TRANSFERS.–A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.

SEC. 214. COORDINATION WITH CANDIDATES OR POLITICAL PARTIES.

(a) IN GENERAL.–Section 315(a)(7)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(7)(B)) is amended–

2 USCA § 441a

(1) by redesignating clause (ii) as clause (iii); and

(2) by inserting after clause (i) the following new clause:

(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and.

(b) REPEAL OF CURRENT REGULATIONS.–The regulations on coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees adopted by the Federal Election Commission and published in the Federal Register

at page 76138 of volume 65, Federal Register, on December 6, 2000, are repealed as of the date by which the Commission is required to promulgate new regulations under subsection (c) (as described in section 402(c)(1)).

2 USCA § 441a NOTE

(c) REGULATIONS BY THE FEDERAL ELECTION COMMISSION.–The Federal Election Commission shall promulgate new regulations on coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees. The regulations shall not require agreement or formal collaboration to establish coordination. In addition to any subject determined by the Commission, the regulations shall address–

(1) payments for the republication of campaign materials;

(2) payments for the use of a common vendor;

(3) payments for communications directed or made by persons who previously served as an employee of a candidate or a political party; and

(4) payments for communications made by a person after substantial discussion about the communication with a candidate or a political party.

2 USCA § 441b

(d) MEANING OF CONTRIBUTION OR EXPENDITURE FOR THE PURPOSES OF SECTION 316.–Section 316(b)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)(2)) is amended by striking "shall include" and inserting "includes a contribution or expenditure, as those terms are defined in section 301, and also includes".

TITLE III–MISCELLANEOUS

2 USCA § 439a

SEC. 301. USE OF CONTRIBUTED AMOUNTS FOR CERTAIN PURPOSES.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by striking section 313 and inserting the following:

SEC. 313. USE OF CONTRIBUTED AMOUNTS FOR CERTAIN PURPOSES.

(a) PERMITTED USES.–A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual–

(1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual;

(2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office;

(3) for contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986; or

(4) for transfers, without limitation, to a national, State, or local committee of a political party.

(b) PROHIBITED USE.–

(1) IN GENERAL.–A contribution or donation described in subsection (a) shall not be converted by any person to personal use.

(2) CONVERSION.–For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including–

(A) a home mortgage, rent, or utility payment;

(B) a clothing purchase;

(C) a noncampaign-related automobile expense;

(D) a country club membership;

(E) a vacation or other noncampaign-related trip;

(F) a household food item;

(G) a tuition payment;

(H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and

(I) dues, fees, and other payments to a health club or recreational facility.

SEC. 302. PROHIBITION OF FUNDRAISING ON FEDERAL PROPERTY.

Section 607 of title 18, United States Code, is amended–

18 USCA § 607

(1) by striking subsection (a) and inserting the following:

(a) PROHIBITION.–

(1) IN GENERAL.–It shall be unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of

money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person.

(2) PENALTY.–A person who violates this section shall be fined not more than $5,000, imprisoned not more than 3 years, or both; and

18 USCA § 607

(2) in subsection (b), by inserting "or Executive Office of the President" after "Congress".

SEC. 303. STRENGTHENING FOREIGN MONEY BAN.

Section 319 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e) is amended–

2 USCA § 441e

(1) by striking the heading and inserting the following:

"CONTRIBUTIONS AND DONATIONS BY FOREIGN NATIONALS"; and

(2) by striking subsection (a) and inserting the following:

(a) PROHIBITION.–It shall be unlawful for–

(1) a foreign national, directly or indirectly, to make–

(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;

(B) a contribution or donation to a committee of a political party; or

(C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 304(f)(3)); or

(2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.

SEC. 304. MODIFICATION OF INDIVIDUAL CONTRIBUTION LIMITS IN RESPONSE TO EXPENDITURES FROM PERSONAL FUNDS.

(a) INCREASED LIMITS FOR INDIVIDUALS.–Section 315 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a) is amended–

2 USCA § 441a

(1) in subsection (a)(1), by striking "No person" and inserting "Except as provided in subsection (i), no person"; and

(2) by adding at the end the following:

(i) INCREASED LIMIT TO ALLOW RESPONSE TO EXPENDITURES FROM PERSONAL FUNDS.–

(1) INCREASE.–

(A) IN GENERAL.–Subject to paragraph (2), if the opposition personal funds amount with respect to a candidate for election to the office of Senator exceeds the threshold amount, the limit under subsection (a)(1)(A) (in this subsection referred to as the "applicable limit") with respect to that candidate shall be the increased limit.

(B) THRESHOLD AMOUNT.–

(i) STATE-BY-STATE COMPETITIVE AND FAIR CAMPAIGN FORMULA.–In this subsection, the threshold amount with respect to an election cycle of a candidate described in subparagraph (A) is an amount equal to the sum of–

(I) $150,000; and

(II) $0.04 multiplied by the voting age population.

(ii) VOTING AGE POPULATION.–In this subparagraph, the term "voting age population" means in the case of a candidate for the office of Senator, the voting age population of the State of the candidate (as certified under section 315(e)).

(C) INCREASED LIMIT.–Except as provided in clause (ii), for purposes of subparagraph (A), if the opposition personal funds amount is over–

(i) 2 times the threshold amount, but not over 4 times that amount–

(I) the increased limit shall be 3 times the applicable limit; and

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution;

(ii) 4 times the threshold amount, but not over 10 times that amount–

(I) the increased limit shall be 6 times the applicable limit; and

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph

(A) during a period in which the candidate may accept such a contribution; and

(iii) 10 times the threshold amount–

(I) the increased limit shall be 6 times the applicable limit;

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

(III) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party shall not apply.

(D) OPPOSITION PERSONAL FUNDS AMOUNT.–The opposition personal funds amount is an amount equal to the excess (if any) of–

(i) the greatest aggregate amount of expenditures from personal funds (as defined in section 304(a)(6)(B)) that an opposing candidate in the same election makes; over

(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

(2) TIME TO ACCEPT CONTRIBUTIONS UNDER INCREASED LIMIT.–

(A) IN GENERAL.–Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and

a party committee shall not make any expenditure, under the increased limit under paragraph (1)–

(i) until the candidate has received notification of the opposition personal funds amount under section 304(a)(6)(B); and

(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 110 percent of the opposition personal funds amount.

(B) EFFECT OF WITHDRAWAL OF AN OPPOSING CANDIDATE.–A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

(3) DISPOSAL OF EXCESS CONTRIBUTIONS.–

(A) IN GENERAL.–The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

(B) RETURN TO CONTRIBUTORS.–A candidate or a candidate's authorized committee

shall return the excess contribution to the person who made the contribution.

(j) LIMITATION ON REPAYMENT OF PERSONAL LOANS.–Any candidate who incurs personal loans made after the effective date of the Bipartisan Campaign Reform Act of 2002 in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed $250,000, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of such election.

(b) NOTIFICATION OF EXPENDITURES FROM PERSONAL FUNDS.–Section 304(a)(6) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(6)) is amended–

2 USCA § 434

(1) by redesignating subparagraph (B) as subparagraph (E); and

(2) by inserting after subparagraph (A) the following:

(B) NOTIFICATION OF EXPENDITURE FROM PERSONAL FUNDS.–

(i) DEFINITION OF EXPENDITURE FROM PERSONAL FUNDS.–In this subparagraph, the term "expenditure from personal funds" means–

(I) an expenditure made by a candidate using personal funds; and

(II) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

(ii) DECLARATION OF INTENT.–Not later than the date that is 15 days after the date on which an individual becomes a candidate for the

office of Senator, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed the State-by- State competitive and fair campaign formula with–

(I) the Commission; and

(II) each candidate in the same election.

(iii) INITIAL NOTIFICATION.–Not later than 24 hours after a candidate described in clause (ii) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of 2 times the threshold amount in connection with any election, the candidate shall file a notification with–

(I) the Commission; and

(II) each candidate in the same election.

(iv) ADDITIONAL NOTIFICATION.–After a candidate files an initial notification under clause (iii), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceed $10,000 with–

(I) the Commission; and

(II) each candidate in the same election. Such notification shall be filed not later than 24 hours after the expenditure is made.

(v) CONTENTS.–A notification under clause (iii) or (iv) shall include–

(I) the name of the candidate and the office sought by the candidate;

(II) the date and amount of each expenditure; and

(III) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

(C) NOTIFICATION OF DISPOSAL OF EXCESS CONTRIBUTIONS.–In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under paragraph (1) of section 315(i)) and the manner in which the candidate or the candidate's authorized committee used such funds.

(D) ENFORCEMENT.–For provisions providing for the enforcement of the reporting requirements under this paragraph, see section 309.

2 USCA § 431

(c) DEFINITIONS.–Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431), as amended by section 101(b), is further amended by adding at the end the following:

(25) ELECTION CYCLE.–For purposes of sections 315(i) and 315A and paragraph (26), the term "election cycle" means the period beginning on the day after the date of the most recent election for the specific office or seat that a candidate is seeking and ending on the date of the next election for that office or seat. For purposes of the preceding sentence, a primary election and

a general election shall be considered to be separate elections.

(26) PERSONAL FUNDS.–The term "personal funds" means an amount that is derived from–

(A) any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had–

(i) legal and rightful title; or

(ii) an equitable interest;

(B) income received during the current election cycle of the candidate, including–

(i) a salary and other earned income from bona fide employment;

(ii) dividends and proceeds from the sale of the candidate's stocks or other investments;

(iii) bequests to the candidate;

(iv) income from trusts established before the beginning of the election cycle;

(v) income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;

(vi) gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and

(vii) proceeds from lotteries and similar legal games of chance; and

(C) a portion of assets that are jointly owned by the candidate and the candidate's spouse equal to the candidate's share of the asset under the instrument of conveyance or ownership, but if no specific share is indicated by an instrument of conveyance or ownership, the value of 1/2 of the property.

SEC. 305. LIMITATION ON AVAILABILITY OF LOWEST UNIT CHARGE FOR FEDERAL CANDIDATES ATTACKING OPPOSITION.

(a) IN GENERAL.–Section 315(b) of the Communications Act of 1934 (47 U.S. C. 315(b)) is amended–

47 USCA § 315

(1) by striking "(b) The charges" and inserting the following:

(b) CHARGES.–

(1) IN GENERAL.–The charges;

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(3) by adding at the end the following:

(2) CONTENT OF BROADCASTS.–

(A) IN GENERAL.–In the case of a candidate for Federal office, such candidate shall not be entitled to receive the rate under paragraph (1)(A) for the use of any broadcasting station unless the candidate provides written certification to the broadcast station that the candidate (and any authorized committee of the candidate) shall not make any direct reference to another

candidate for the same office, in any broadcast using the rights and conditions of access under this Act, unless such reference meets the requirements of subparagraph (C) or (D).

(B) LIMITATION ON CHARGES.–If a candidate for Federal office (or any authorized committee of such candidate) makes a reference described in subparagraph (A) in any broadcast that does not meet the requirements of subparagraph (C) or (D), such candidate shall not be entitled to receive the rate under paragraph (1)(A) for such broadcast or any other broadcast during any portion of the 45-day and 60-day periods described in paragraph (1)(A), that occur on or after the date of such broadcast, for election to such office.

(C) TELEVISION BROADCASTS.–A candidate meets the requirements of this subparagraph if, in the case of a television broadcast, at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds–

(i) a clearly identifiable photographic or similar image of the candidate; and

(ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast.

(D) RADIO BROADCASTS.–A candidate meets the requirements of this subparagraph if, in the case of a radio broadcast, the broadcast includes a personal audio statement by the candidate that identifies the candidate, the office

the candidate is seeking, and indicates that the candidate has approved the broadcast.

(E) CERTIFICATION.–Certifications under this section shall be provided and certified as accurate by the candidate (or any authorized committee of the candidate) at the time of purchase.

(F) DEFINITIONS.–For purposes of this paragraph, the terms "authorized committee" and "Federal office" have the meanings given such terms by section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431).

47 USCA § 315

(b) CONFORMING AMENDMENT.–Section 315(b)(1)(A) of the Communications Act of 1934 (47 U.S.C. 315(b)(1)(A)), as amended by this Act, is amended by inserting "subject to paragraph (2)," before "during the forty-five days".

47 USCA § 315 NOTE

(c) EFFECTIVE DATE.–The amendments made by this section shall apply to broadcasts made after the effective date of this Act.

2 USCA § 434

SEC. 306. SOFTWARE FOR FILING REPORTS AND PROMPT DISCLOSURE OF CONTRIBUTIONS.

Section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)) is amended by adding at the end the following:

(12) SOFTWARE FOR FILING OF REPORTS.–

(A) IN GENERAL.–The Commission shall–

(i) promulgate standards to be used by vendors to develop software that–

(I) permits candidates to easily record information concerning receipts and disbursements required to be reported under this Act at the time of the receipt or disbursement;

(II) allows the information recorded under subclause (I) to be transmitted immediately to the Commission; and

(III) allows the Commission to post the information on the Internet immediately upon receipt; and

(ii) make a copy of software that meets the standards promulgated under clause (i) available to each person required to file a designation, statement, or report in electronic form under this Act.

(B) ADDITIONAL INFORMATION.–To the extent feasible, the Commission shall require vendors to include in the software developed under the standards under subparagraph (A) the ability for any person to file any designation, statement, or report required under this Act in electronic form.

(C) REQUIRED USE.–Notwithstanding any provision of this Act relating to times for filing reports, each candidate for Federal office (or that candidate's authorized committee) shall use software that meets the standards promulgated under this paragraph once such software is made available to such candidate.

(D) REQUIRED POSTING.–The Commission shall, as soon as practicable, post on the

Internet any information received under this paragraph.

SEC. 307. MODIFICATION OF CONTRIBUTION LIMITS.

(a) INCREASE IN INDIVIDUAL LIMITS FOR CERTAIN CONTRIBUTIONS.–Section 315(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(1)) is amended–

2 USCA § 441a

(1) in subparagraph (A), by striking "$1,000" and inserting "$2,000"; and

(2) in subparagraph (B), by striking "$20,000" and inserting "$25,000".

(b) INCREASE IN ANNUAL AGGREGATE LIMIT ON INDIVIDUAL CONTRIBUTIONS.–Section 315(a)(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(3)) is amended to read as follows:

(3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than–

(A) $37,500, in the case of contributions to candidates and the authorized committees of candidates;

(B) $57,500, in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties.

(c) INCREASE IN SENATORIAL CAMPAIGN COMMITTEE LIMIT.–Section 315(h) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(h)) is amended by striking "$17,500" and inserting "$35,000".

(d) INDEXING OF CONTRIBUTION LIMITS.–Section 315(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)) is amended–

(1) in paragraph (1)–

(A) by striking the second and third sentences;

(B) by inserting "(A)" before "At the beginning"; and

(C) by adding at the end the following:

(B) Except as provided in subparagraph (C), in any calendar year after 2002–

(i) limitation established by subsections (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

(ii) each amount so increased shall remain in effect for the calendar year; and

(iii) if any amount after adjustment under clause (i) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(C) In the case of limitations under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), increases shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.; and

(2) in paragraph (2)(B), by striking "means the calendar year 1974" and inserting "means–

(i) for purposes of subsections (b) and (d), calendar year 1974; and

(ii) for purposes of subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), calendar year 2001".

2 USCA § 441a NOTE

(e) EFFECTIVE DATE.–The amendments made by this section shall apply with respect to contributions made on or after January 1, 2003.

SEC. 308. DONATIONS TO PRESIDENTIAL INAUGURAL COMMITTEE.

(a) IN GENERAL.–Chapter 5 of title 36, United States Code, is amended by–

36 USCA § 510
36 USCA § 511

(1) redesignating section 510 as section 511; and

36 USCA § 510

(2) inserting after section 509 the following:

§ 510. Disclosure of and prohibition on certain donations

(a) IN GENERAL.–A committee shall not be considered to be the Inaugural Committee for purposes of this chapter unless the committee agrees to, and meets, the requirements of subsections (b) and (c).

(b) DISCLOSURE.–

(1) IN GENERAL.–Not later than the date that is 90 days after the date of the Presidential inaugural ceremony, the committee shall file a report with the Federal Election Commission disclosing any donation of money or anything of value made to the committee in an aggregate amount equal to or greater than $200.

(2) CONTENTS OF REPORT.–A report filed under paragraph (1) shall contain–

(A) the amount of the donation;

(B) the date the donation is received; and

(C) the name and address of the person making the donation.

(c) LIMITATION.–The committee shall not accept any donation from a foreign national (as defined in section 319(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e(b))).

2 USCA § 434

(b) REPORTS MADE AVAILABLE BY FEC.–Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434), as amended by sections 103, 201, and 212 is amended by adding at the end the following:

(h) REPORTS FROM INAUGURAL COMMITTEES.–The Federal Election Commission shall make any report filed by an Inaugural Committee under section 510 of title 36, United States Code, accessible to the public at the offices of the Commission and on the Internet not later than 48 hours after the report is received by the Commission.

SEC. 309. PROHIBITION ON FRAUDULENT SOLICITATION OF FUNDS.

Section 322 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441h) is amended–

2 USCA § 441h

(1) by inserting "(a) IN GENERAL."– before "No person"; and

(2) by adding at the end the following:

(b) FRAUDULENT SOLICITATION OF FUNDS.–No person shall–

(1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or

(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

2 USCA § 431 NOTE

SEC. 310. STUDY AND REPORT ON CLEAN MONEY CLEAN ELECTIONS LAWS.

(a) CLEAN MONEY CLEAN ELECTIONS DEFINED.–In this section, the term "clean money clean elections" means funds received under State laws that

provide in whole or in part for the public financing of election campaigns.

(b) STUDY.–

(1) IN GENERAL.–The Comptroller General shall conduct a study of the clean money clean elections of Arizona and Maine.

(2) MATTERS STUDIED.–

(A) STATISTICS ON CLEAN MONEY CLEAN ELECTIONS CANDIDATES.–The Comptroller General shall determine–

(i) the number of candidates who have chosen to run for public office with clean money clean elections including–

(I) the office for which they were candidates;

(II) whether the candidate was an incumbent or a challenger; and

(III) whether the candidate was successful in the candidate's bid for public office; and

(ii) the number of races in which at least one candidate ran an election with clean money clean elections.

(B) EFFECTS OF CLEAN MONEY CLEAN ELECTIONS.–The Comptroller General of the United States shall describe the effects of public financing under the clean money clean elections laws on the 2000 elections in Arizona and Maine.

(c) REPORT.–Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United

States shall submit a report to the Congress detailing the results of the study conducted under subsection (b).

SEC. 311. CLARITY STANDARDS FOR IDENTIFICATION OF SPONSORS OF ELECTION-RELATED ADVERTISING.

Section 318 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d) is amended–

(1) in subsection (a)–

2 USCA § 441d

(A) in the matter preceding paragraph (1)–

(i) by striking "Whenever" and inserting "Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever";

(ii) by striking "an expenditure" and inserting "a disbursement";

(iii) by striking "direct"; and

(iv) by inserting "or makes a disbursement for an electioneering communication (as defined in section 304(f)(3))" after "public political advertising"; and

2 USCA § 441d

(B) in paragraph (3), by inserting "and permanent street address, telephone number, or World Wide Web address" after "name"; and

2 USCA § 441d

(2) by adding at the end the following:

(c) SPECIFICATION.–Any printed communication described in subsection (a) shall–

(1) be of sufficient type size to be clearly readable by the recipient of the communication;

(2) be contained in a printed box set apart from the other contents of the communication; and

(3) be printed with a reasonable degree of color contrast between the background and the printed statement.

(d) ADDITIONAL REQUIREMENTS.–

(1) COMMUNICATIONS BY CANDIDATES OR AUTHORIZED PERSONS.–

(A) BY RADIO.–Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through radio shall include, in addition to the requirements of that paragraph, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

(B) BY TELEVISION.–Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through television shall include, in addition to the requirements of that paragraph, a statement that identifies the candidate and states that the candidate has approved the communication. Such statement–

(i) shall be conveyed by–

(I) an unobscured, full-screen view of the candidate making the statement, or

(II) the candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and

(ii) shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

(2) COMMUNICATIONS BY OTHERS.–Any communication described in paragraph (3) of subsection (a) which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the following audio statement: "_____ is responsible for the content of this advertising." (with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor). If transmitted through television, the statement shall be conveyed by an unobscured, full- screen view of a representative of the political committee or other person making the statement, or by a representative of such political committee or other person in voice-over, and shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

SEC. 312. INCREASE IN PENALTIES.

2 USCA § 437g

(a) IN GENERAL.–Subparagraph (A) of section 309(d)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(d)(1)(A)) is amended to read as follows:

(A) Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure–

(i) aggregating $25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; or

(ii) aggregating $2,000 or more (but less than $25,000) during a calendar year shall be fined under such title, or imprisoned for not more than 1 year, or both.

2 USCA § 437g NOTE

(b) EFFECTIVE DATE.–The amendment made by this section shall apply to violations occurring on or after the effective date of this Act.

SEC. 313. STATUTE OF LIMITATIONS.

2 USCA § 455

(a) IN GENERAL.–Section 406(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 455(a)) is amended by striking "3" and inserting "5".

2 USCA § 455 NOTE

(b) EFFECTIVE DATE.–The amendment made by this section shall apply to violations occurring on or after the effective date of this Act.

28 USCA § 994 NOTE

SEC. 314. SENTENCING GUIDELINES.

(a) IN GENERAL.–The United States Sentencing Commission shall–

(1) promulgate a guideline, or amend an existing guideline under section 994 of title 28, United States Code, in accordance with paragraph (2), for penalties for violations of the Federal Election Campaign Act of 1971 and related election laws; and

(2) submit to Congress an explanation of any guidelines promulgated under paragraph (1) and any legislative or administrative recommendations regarding enforcement of the Federal Election Campaign Act of 1971 and related election laws.

(b) CONSIDERATIONS.–The Commission shall provide guidelines under subsection (a) taking into account the following considerations:

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of such violations and the need for aggressive and appropriate law enforcement action to prevent such violations.

(2) Provide a sentencing enhancement for any person convicted of such violation if such violation involves–

(A) a contribution, donation, or expenditure from a foreign source;

(B) a large number of illegal transactions;

(C) a large aggregate amount of illegal contributions, donations, or expenditures;

(D) the receipt or disbursement of governmental funds; and

(E) an intent to achieve a benefit from the Federal Government.

(3) Assure reasonable consistency with other relevant directives and guidelines of the Commission.

(4) Account for aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing

guidelines currently provide sentencing enhancements.

(5) Assure the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.

(c) EFFECTIVE DATE; EMERGENCY AUTHORITY TO PROMULGATE GUIDELINES.–

(1) EFFECTIVE DATE.–Notwithstanding section 402, the United States Sentencing Commission shall promulgate guidelines under this section not later than the later of–

(A) 90 days after the effective date of this Act; or

(B) 90 days after the date on which at least a majority of the members of the Commission are appointed and holding office.

(2) EMERGENCY AUTHORITY TO PROMULGATE GUIDELINES.–The Commission shall promulgate guidelines under this section in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under such Act has not expired.

SEC. 315. INCREASE IN PENALTIES IMPOSED FOR VIOLATIONS OF CONDUIT CONTRIBUTION BAN.

(a) INCREASE IN CIVIL MONEY PENALTY FOR KNOWING AND WILLFUL VIOLATIONS.–Section 309(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)) is amended–

2 USCA § 437g

(1) in paragraph (5)(B), by inserting before the period at the end the following: "(or, in the case of a violation of section 320, which is not

less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation)"; and

(2) in paragraph (6)(C), by inserting before the period at the end the following: "(or, in the case of a violation of section 320, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation)".

(b) INCREASE IN CRIMINAL PENALTY.–Section 309(d)(1) of such Act (2 U.S.C. 437g(d)(1)) is amended by adding at the end the following new subparagraph:

(D) Any person who knowingly and willfully commits a violation of section 320 involving an amount aggregating more than $10,000 during a calendar year shall be–

(i) imprisoned for not more than 2 years if the amount is less than $25,000 (and subject to imprisonment under subparagraph (A) if the amount is $25,000 or more);

(ii) fined not less than 300 percent of the amount involved in the violation and not more than the greater of–

(I) $50,000; or

(II) 1,000 percent of the amount involved in the violation; or

(iii) both imprisoned under clause (i) and fined under clause (ii).

2 USCA § 437g NOTE

(c) EFFECTIVE DATE.–The amendments made by this section shall apply with respect to violations occurring on or after the effective date of this Act.

2 USCA § 441a

SEC. 316. RESTRICTION ON INCREASED CONTRIBUTION LIMITS BY TAKING INTO ACCOUNT CANDIDATE'S AVAILABLE FUNDS.

Section 315(i)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(i)(1)), as added by this Act, is amended by adding at the end the following:

(E) SPECIAL RULE FOR CANDIDATE'S CAMPAIGN FUNDS.–

(i) IN GENERAL.–For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (D)(ii), such amount shall include the gross receipts advantage of the candidate's authorized committee.

(ii) GROSS RECEIPTS ADVANTAGE.–For purposes of clause (i), the term "gross receipts advantage" means the excess, if any, of–

(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

2 USCA § 441e

SEC. 317. CLARIFICATION OF RIGHT OF NATIONALS OF THE UNITED STATES TO MAKE POLITICAL CONTRIBUTIONS.

Section 319(b)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e(b)(2)) is amended by inserting after "United States" the following: "or a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act)".

2 USCA § 441k

SEC. 318. PROHIBITION OF CONTRIBUTIONS BY MINORS.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.), as amended by section 101, is further amended by adding at the end the following new section:

PROHIBITION OF CONTRIBUTIONS BY MINORS

SEC. 324. An individual who is 17 years old or younger shall not make a contribution to a candidate or a contribution or donation to a committee of a political party.

SEC. 319. MODIFICATION OF INDIVIDUAL CONTRIBUTION LIMITS FOR HOUSE CANDIDATES IN RESPONSE TO

EXPENDITURES FROM PERSONAL FUNDS.

2 USCA § 441a-1

(a) INCREASED LIMITS.–Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by inserting after section 315 the following new section:

MODIFICATION OF CERTAIN LIMITS FOR HOUSE CANDIDATES IN RESPONSE TO PERSONAL FUND EXPENDITURES OF OPPONENTS

SEC. 315A. (a) AVAILABILITY OF INCREASED LIMIT.–

(1) IN GENERAL.–Subject to paragraph (3), if the opposition personal funds amount with respect to a candidate for election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress exceeds $350,000–

(A) the limit under subsection (a)(1)(A) with respect to the candidate shall be tripled;

(B) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to the candidate if the contribution is made under the increased limit allowed under subparagraph (A) during a period in which the candidate may accept such a contribution; and

(C) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party on behalf of the candidate shall not apply.

(2) DETERMINATION OF OPPOSITION PERSONAL FUNDS AMOUNT.–

(A) IN GENERAL.–The opposition personal funds amount is an amount equal to the excess (if any) of–

(i) the greatest aggregate amount of expenditures from personal funds (as defined in subsection (b)(1)) that an opposing candidate in the same election makes; over

(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

(B) SPECIAL RULE FOR CANDIDATE'S CAMPAIGN FUNDS.–

(i) IN GENERAL.–For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (A), such amount shall include the gross receipts advantage of the candidate's authorized committee.

(ii) GROSS RECEIPTS ADVANTAGE.–For purposes of clause (i), the term "gross receipts advantage" means the excess, if any, of–

(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized

committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

(3) TIME TO ACCEPT CONTRIBUTIONS UNDER INCREASED LIMIT.–

(A) IN GENERAL.–Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)–

(i) until the candidate has received notification of the opposition personal funds amount under subsection (b)(1); and

(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 100 percent of the opposition personal funds amount.

(B) EFFECT OF WITHDRAWAL OF AN OPPOSING CANDIDATE.–A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the

amount of such increased limit is attributable to such an opposing candidate.

(4) DISPOSAL OF EXCESS CONTRIBUTIONS.–

(A) IN GENERAL.–The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

(B) RETURN TO CONTRIBUTORS.–A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

(b) NOTIFICATION OF EXPENDITURES FROM PERSONAL FUNDS.–

(1) IN GENERAL.–

(A) DEFINITION OF EXPENDITURE FROM PERSONAL FUNDS.–In this paragraph, the term "expenditure from personal funds" means–

(i) an expenditure made by a candidate using personal funds; and

(ii) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

(B) DECLARATION OF INTENT.–Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Representative in, or Delegate or Resident

Commissioner to, the Congress, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed $350,000.

(C) INITIAL NOTIFICATION.–Not later than 24 hours after a candidate described in subparagraph (B) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of $350,000 in connection with any election, the candidate shall file a notification.

(D) ADDITIONAL NOTIFICATION.–After a candidate files an initial notification under subparagraph (C), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceeds $10,000. Such notification shall be filed not later than 24 hours after the expenditure is made.

(E) CONTENTS.–A notification under subparagraph (C) or (D) shall include–

(i) the name of the candidate and the office sought by the candidate;

(ii) the date and amount of each expenditure; and

(iii) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

(F) PLACE OF FILING.–Each declaration or notification required to be filed by a candidate under subparagraph (C), (D), or (E) shall be filed with–

(i) the Commission; and

(ii) each candidate in the same election and the national party of each such candidate.

(2) NOTIFICATION OF DISPOSAL OF EXCESS CONTRIBUTIONS.–In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under subsection (a)) and the manner in which the candidate or the candidate's authorized committee used such funds.

(3) ENFORCEMENT.–For provisions providing for the enforcement of the reporting requirements under this subsection, see section 309.

2 USCA § 441a

(b) CONFORMING AMENDMENT.–Section 315(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a), as amended by section 304(a), is amended by striking "subsection (i)," and inserting "subsection (i) and section 315A,.

TITLE IV–SEVERABILITY; EFFECTIVE DATE

2 USCA § 454 NOTE

SEC. 401. SEVERABILITY.

If any provision of this Act or amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendment to any person or circumstance, shall not be affected by the holding.

2 USCA § 431 NOTE

SEC. 402. EFFECTIVE DATES AND REGULATIONS.

(a) GENERAL EFFECTIVE DATE.–

(1) IN GENERAL.–Except as provided in the succeeding provisions of this section, the effective date

of this Act, and the amendments made by this Act, is November 6, 2002.

(2) MODIFICATION OF CONTRIBUTION LIMITS.–The amendments made by–

(A) section 102 shall apply with respect to contributions made on or after January 1, 2003; and

(B) section 307 shall take effect as provided in subsection (e) of such section.

(3) SEVERABILITY; EFFECTIVE DATES AND REGULATIONS; JUDICIAL REVIEW.–Title IV shall take effect on the date of enactment of this Act.

(4) PROVISIONS NOT TO APPLY TO RUNOFF ELECTIONS.–Section 323(b) of the Federal Election Campaign Act of 1971 (as added by section 101(a)), section 103(a), title II, sections 304 (including section 315(j) of Federal Election Campaign Act of 1971, as added by section 304(a)(2)), 305 (notwithstanding subsection (c) of such section), 311, 316, 318, and 319, and title V (and the amendments made by such sections and titles) shall take effect on November 6, 2002, but shall not apply with respect to runoff elections, recounts, or election contests resulting from elections held prior to such date.

(b) SOFT MONEY OF NATIONAL POLITICAL PARTIES.–

(1) IN GENERAL.–Except for subsection (b) of such section, section 323 of the Federal Election Campaign Act of 1971 (as added by section 101(a)) shall take effect on November 6, 2002.

(2) TRANSITIONAL RULES FOR THE SPENDING OF SOFT MONEY OF NATIONAL POLITICAL PARTIES.–

(A) IN GENERAL.–Notwithstanding section 323(a) of the Federal Election Campaign Act of 1971 (as added by section 101(a)), if a national committee of a political party described in such section (including any person who is subject to such section under paragraph (2) of such section), has received funds described in such section prior to November 6, 2002, the rules described in subparagraph (B) shall apply with respect to the spending of the amount of such funds in the possession of such committee as of such date.

(B) USE OF EXCESS SOFT MONEY FUNDS.–

(i) IN GENERAL.–Subject to clauses (ii) and (iii), the national committee of a political party may use the amount described in subparagraph (A) prior to January 1, 2003, solely for the purpose of–

(I) retiring outstanding debts or obligations that were incurred solely in connection with an election held prior to November 6, 2002; or

(II) paying expenses or retiring outstanding debts or paying for obligations that were incurred solely in connection with any runoff election, recount, or election contest resulting from an election held prior to November 6, 2002.

(ii) PROHIBITION ON USING SOFT MONEY FOR HARD MONEY EXPENSES, DEBTS, AND OBLIGATIONS.–A national committee of a political party may not use the amount described in subparagraph (A) for any

expenditure (as defined in section 301(9) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(9))) or for retiring outstanding debts or obligations that were incurred for such an expenditure.

(iii) PROHIBITION OF BUILDING FUND USES.–A national committee of a political party may not use the amount described in subparagraph (A) for activities to defray the costs of the construction or purchase of any office building or facility.

(c) REGULATIONS.–

(1) IN GENERAL.–Except as provided in paragraph (2), the Federal Election Commission shall promulgate regulations to carry out this Act and the amendments made by this Act that are under the Commission's jurisdiction not later than 270 days after the date of enactment of this Act.

(2) SOFT MONEY OF POLITICAL PARTIES.–Not later than 90 days after the date of enactment of this Act, the Federal Election Commission shall promulgate regulations to carry out title I of this Act and the amendments made by such title.

2 USCA § 437h NOTE

SEC. 403. JUDICIAL REVIEW.

(a) SPECIAL RULES FOR ACTIONS BROUGHT ON CONSTITUTIONAL GROUNDS.–If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:

(1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

(2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.

(3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.

(4) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(b) INTERVENTION BY MEMBERS OF CONGRESS.–In any action in which the constitutionality of any provision of this Act or any amendment made by this Act is raised (including but not limited to an action described in subsection (a)), any member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or Senate shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment. To avoid duplication of efforts and reduce the burdens placed on the parties to the action, the court in any such action may make such orders as it considers necessary, including orders to require intervenors taking similar positions to file joint papers or to be represented by a single attorney at oral argument.

(c) CHALLENGE BY MEMBERS OF CONGRESS.–Any Member of Congress may bring an action, subject to the special rules described in subsection (a), for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act.

(d) APPLICABILITY.–

(1) INITIAL CLAIMS.–With respect to any action initially filed on or before December 31, 2006, the provisions of subsection (a) shall apply with respect to each action described in such section.

(2) SUBSEQUENT ACTIONS.–With respect to any action initially filed after December 31, 2006, the provisions of subsection (a) shall not apply to any action described in such section unless the person filing such action elects such provisions to apply to the action.

TITLE V–ADDITIONAL DISCLOSURE PROVISIONS

2 USCA § 434

SEC. 501. INTERNET ACCESS TO RECORDS.

Section 304(a)(11)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(11)(B)) is amended to read as follows:

(B) The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public in the offices of the Commission and accessible to the public on the Internet not later than 48 hours (or not later than 24 hours in the case of a designation, statement, report, or notification filed electronically) after receipt by the Commission.

2 USCA § 438a

SEC. 502. MAINTENANCE OF WEBSITE OF ELECTION REPORTS.

(a) IN GENERAL.–The Federal Election Commission shall maintain a central site on the Internet to make accessible to the public all publicly available election-related reports and information.

(b) ELECTION-RELATED REPORT.–In this section, the term "election-related report" means any report, designation, or statement required to be filed under the Federal Election Campaign Act of 1971.

(c) COORDINATION WITH OTHER AGENCIES.–Any Federal executive agency receiving election-related information which that agency is required by law to publicly disclose shall cooperate and coordinate with the Federal Election Commission to make such report available through, or for posting on, the site of the Federal Election Commission in a timely manner.

SEC. 503. ADDITIONAL DISCLOSURE REPORTS.

2 USCA § 434

(a) PRINCIPAL CAMPAIGN COMMITTEES.–Section 304(a)(2)(B) of the Federal Election Campaign Act of 1971 is amended by striking "the following reports" and all that follows through the period and inserting "the treasurer shall file quarterly reports, which shall be filed not later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter, except that the report for the quarter ending December 31 shall be filed not later than January 31 of the following calendar year."

(b) NATIONAL COMMITTEE OF A POLITICAL PARTY.–Section 304(a)(4) of such Act (2 U.S.C. 434(a)(4)) is amended by adding at the end the following flush sentence: "Notwithstanding the preceding sentence, a national committee of a political party shall file the reports required under subparagraph (B)."

47 USCA § 315

SEC. 504. PUBLIC ACCESS TO BROADCASTING RECORDS.

Section 315 of the Communications Act of 1934 (47 U.S.C. 315), as amended by this Act, is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and inserting after subsection (d) the following:

(e) POLITICAL RECORD.–

(1) IN GENERAL.–A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that–

(A) is made by or on behalf of a legally qualified candidate for public office; or

(B) communicates a message relating to any political matter of national importance, including–

(i) a legally qualified candidate;

(ii) any election to Federal office; or

(iii) a national legislative issue of public importance.

(2) CONTENTS OF RECORD.–A record maintained under paragraph (1) shall contain information regarding–

(A) whether the request to purchase broadcast time is accepted or rejected by the licensee;

(B) the rate charged for the broadcast time;

(C) the date and time on which the communication is aired;

(D) the class of time that is purchased;

(E) the name of the candidate to which the communication refers and the office to which the

candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(F) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(G) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

(3) TIME TO MAINTAIN FILE.–The information required under this subsection shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.

Approved March 27, 2002.

Supreme Court, U.S.
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No. 02-1727

In the Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE, ET AL.,
APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.

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QUESTIONS PRESENTED

In 2002, the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. BCRA is designed to address various abuses associated with the financing of federal election campaigns and thereby protect the integrity of the federal electoral process. The questions presented by this appeal are as follows:

1. Whether the limitations on political parties imposed by Section 101 of BCRA are constitutional.

2. Whether appellants' challenge to Section 214(b) and (c) of BCRA, which directs the Federal Election Commission to promulgate new regulations governing "coordinated communications" (§ 214(b), 116 Stat. 94) and provides that those regulations "shall not require agreement or formal collaboration to establish coordination" (§ 214(c), 116 Stat. 95), is justiciable at this time.

3. Whether Section 214(b) and (c) of BCRA is constitutional.

4. Whether appellants have standing to challenge Sections 304 and 319 of BCRA, which establish increased contribution limits when a candidate faces an opponent who expends substantial personal funds, beyond a statutory threshold amount, on his own campaign.

5. Whether Sections 304 and 319 of BCRA are constitutional.

In the Supreme Court of the United States

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.[1]

OPINIONS BELOW

The opinions of the district court are not yet reported.

JURISDICTION

The judgment of the district court was entered on May 2, 2003. Appellants' notice of appeal (J.S. App. 1a-2a) was filed on May 7, 2003. Appellants' jurisdictional statement was filed on May 27, 2003. The jurisdiction of

[1] This response is filed on behalf of the Federal Election Commission (FEC) and David M. Mason, Ellen L. Weintraub, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Michael E. Toner, in their capacities as Commissioners of the FEC; John Ashcroft, in his capacity as Attorney General of the United States; the United States Department of Justice; the Federal Communications Commission; and the United States of America. Those parties are appellants in *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676.

this Court is invoked under the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 403(a)(3), 116 Stat. 114.

STATEMENT

This case presents a facial challenge to the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. A three-judge panel of the District Court for the District of Columbia held that several provisions of BCRA violate the First Amendment to the Constitution, while sustaining other BCRA provisions against various constitutional challenges. The district court also held that the plaintiffs' challenges to certain BCRA provisions are not justiciable in this suit. Congress has vested this Court with direct appellate jurisdiction over the district court's decision. See BCRA § 403(a)(3), 116 Stat. 114.

Appellants challenge various rulings of the district court that (a) rejected some of appellants' constitutional challenges on the merits, or (b) held certain of their claims to be non-justiciable. As of this date, five other jurisdictional statements arising out of the same district court judgment are pending before this Court. See *Mitch McConnell, United States Senator* v. *Federal Election Commission*, No. 02-1674; *National Rifle Association* v. *Federal Election Commission*, No. 02-1675; *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676 (see note 1, *supra*); *John McCain, United States Senator* v. *Mitch McConnell, United States Senator*, No. 02-1702; *National Right to Life Committee, Inc.* v. *Federal Election Commission*, No. 02-1733.

DISCUSSION

Under Section 403(a)(3) of BCRA, the final decision of the district court in this case is "reviewable only by appeal directly to the Supreme Court of the United States." 116 Stat. 114. Pursuant to Section 403(a)(4) of BCRA, this Court is directed "to advance on the docket and to expedite to the greatest possible extent the disposition of the * * * appeal." 116 Stat. 114. In addition to filing our own jurisdictional statement (see note 1, *supra*) to appeal the district court's rulings declaring certain provisions of BCRA to be invalid, appellees will defend on appeal those provisions of the statute that were sustained against appellants' constitutional challenges. Appellees agree, however, that appellants' jurisdictional statement identifies substantial questions of federal law and that this Court should note probable jurisdiction over the appeal.[2]

---

[2] On May 23, 2003, appellees filed a motion for expedited briefing schedule applicable to all then-pending appeals (see p. 2, *supra*) from the district court's judgment in this case. That briefing schedule should also be made applicable to the instant appeal.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

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MAY 2003

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IN THE

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Appellants,

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Appellees.

NATIONAL RIGHT TO LIFE COMMITTEE, INC., *et al.*,
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Appellees.

On Appeals from the
United States District Court
for the District of Columbia

INTERVENOR-APPELLEES' RESPONSE TO JURISDICTIONAL STATEMENTS

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QUESTIONS PRESENTED

1. Whether the Court should summarily dispose of appellants' constitutional challenges to Sections 212, 214(b), 214(c), 304, 319, and 403(b) of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, because those challenges are plainly nonjusticiable or insubstantial under settled law.

2. Whether, in other respects, the Court should note probable jurisdiction over appellants' constitutional challenges to BCRA, and set the appeals on those issues for briefing and oral argument.

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IN THE

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NO. 02-1727

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INTERVENOR-APPELLEES' RESPONSE TO JURISDICTIONAL STATEMENTS

INTRODUCTION

Although intervenor-appellees take issue with the positions taken on the merits by the Republican National Committee (RNC), *et al.*, and the National Right to Life Committee (NRLC), *et al.*, in their jurisdictional statements, we agree that many of the questions presented in their jurisdictional statements warrant plenary consideration by this Court.[1] In light of Sections 403(a)(3) and (a)(4) of the Bipar-

[1] Intervenor-appellees are Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, Representative Martin

tisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, which provide for direct and expedited review in this Court of any final decision of a three-judge district court hearing a challenge to the constitutionality of BCRA, and in light of the importance of the issues to the nation, intervenor-appellees submit that the Court should note probable jurisdiction over these appeals and set the cases for briefing and oral argument.

Some of the questions presented in the RNC and NRLC jurisdictional statements, however, do not warrant plenary consideration by this Court. Those questions raise challenges to BCRA that are either clearly nonjusticiable under well-settled principles of constitutional and administrative law, or otherwise so insubstantial as not to justify further briefing and argument. It is entirely appropriate for the Court to summarily dispose of appeals by dismissal or affirmance, insofar as they seek to raise issues that are nonjusticiable or insubstantial.[2] Summary disposition of such issues is especially appropriate in complex cases such as these, which present challenges by 77 separate parties to nearly two dozen separate provisions. *See* Supplemental Appendix to Jurisdictional Statement (JSSA) 10-15sa ("Chart of the Court's Rulings"), 76-77sa n.55 (per curiam). Through summary disposition, the Court can focus briefing and argument on those issues that warrant plenary review. Such summary disposition would promote the orderly and expedited resolution of the various pending challenges to BCRA.

Meehan, Senator Olympia Snowe, and Senator James Jeffords. The intervenors are also appellants in No. 02-1702, *McCain* v. *McConnell*.

[2] *See* S. Ct. R. 18.6 and 18.12; *see also Don't Bankrupt Wash. Comm.* v. *Continental Ill. National Bank & Trust Co.*, 460 U.S. 1077 (1983) (summary dismissal for want of jurisdiction, "it appearing appellant lacks standing to bring this appeal"); *Republican National Comm.* v. *FEC*, 445 U.S. 955 (1980) (summary affirmance of lower court decisions rejecting various constitutional challenges to campaign finance laws on the merits); *Clark* v. *Kimmitt*, 431 U.S. 950 (1977) (summary affirmance of D.C. Circuit's dismissal of various challenges to campaign finance laws as nonjusticiable).

ARGUMENT

I. THE RNC APPELLANTS FAIL TO RAISE ANY JUSTICIABLE QUESTION WITH RESPECT TO THE COORDINATION RULEMAKING PROVISIONS OF BCRA SECTION 214(b)-(c)

Like the McConnell appellants, the RNC appellants challenge the coordination rulemaking provisions of BCRA Section 214(b)-(c). *See* RNC J.S. Question Presented 2 and pp. 15-16. The RNC appellants contend that Section 214 directed the Federal Election Commission (FEC) to promulgate coordination rules that will *necessarily* encompass conduct that is truly independent of a candidate, and will make political parties responsible for independent expenditures by persons or entities with whom the parties have little if any relationship. *See* RNC J.S. 4, 6, 15-16.

For the reasons set forth at pages 7-12 of our response to the McConnell and NRA jurisdictional statements (Nos. 02-1674 and 02-1675, respectively), these challenges to Section 214 fail under well-established principles of justiciability and subject-matter jurisdiction. Appellants have no basis for a facial challenge to Section 214, for there is nothing in that provision that requires the FEC to issue regulations that would conflict with any constitutional principle that this Court has articulated with respect to independent expenditures. To the extent the RNC appellants are dissatisfied with the outcome of the FEC's rulemaking, they may challenge the Commission's coordination rules in an action for judicial review under the Administrative Procedure Act, in which they may raise both constitutional and statutory challenges to those rules. The district court was therefore clearly correct in holding these claims to be nonjusticiable and beyond the subject-matter jurisdiction of the special three-judge district court conferred by BCRA Section 403(a). *See* JSSA 134-56sa (per curiam).

II. THE RNC APPELLANTS LACK STANDING TO CHALLENGE THE "MILLIONAIRES PROVISIONS" OF BCRA SECTIONS 304 AND 319

The third question presented in the RNC's jurisdictional statement is whether BCRA's so-called "Millionaires Provisions" violate constitutional equal protection principles. The challenged provisions in BCRA Sections 304 and 319 allow a Senate or House candidate, respectively, to raise hard money in increased amounts if his or her opponent spends large sums of personal money on the campaign. The contribution limits increase depending on the amount of personal funds expended by the self-financed opponent. The statutory formula takes into account funds amassed by candidates (not including contributions from personal funds), so that an incumbent candidate with a sizable war chest will not benefit unless his or her self-financed opponent devotes a much larger amount of personal funds to the campaign. *See* BCRA § 316. A candidate whose opponent spends a "personal funds amount" more than a certain sum may also accept increased coordinated expenditures from his or her state or national party. *See* BCRA § 304(a) (Senate), § 319(a) (House). A candidate's ability to accept contributions and party coordinated expenditures under these increased limits is subject to an overall cap tied to the amount spent by the self-financed opponent. *Id.*

The RNC appellants contend that these provisions "effectively punish any Senate or House candidate who uses more than specified amounts of personal assets to fund his or her campaign," thereby violating such candidates' "First Amendment-protected rights to spend their own resources." RNC J.S. 4, 6. The district court unanimously and correctly held, however, that none of the RNC appellants has standing to challenge those provisions in this litigation. *See* JSSA 8sa (per curiam), 475-77sa (Henderson). As Judge Henderson explained, none of the RNC appellants claims to be a candidate or even a potential candidate for the House or Senate who might spend more than the specified amounts of personal funds on a campaign. *See* JSSA 477sa. Accordingly, a

claim that any of the RNC appellants would suffer disadvantage because of the challenged provisions is entirely theoretical at this point.

The RNC appellants also argue that political parties have standing to challenge Sections 304 and 319 on equal protection grounds because those provisions supposedly require parties to treat their own similarly situated candidates differently, with respect to making coordinated expenditures. *See* RNC J.S. Question Presented 3 and pp. 16-17. As Judge Henderson explained, that reading of BCRA is plainly wrong: "even in circumstances where the provisions *permit* a party committee to engage in unlimited coordinated spending [subject to the overall cap], they do not *require* a committee to do so." JSSA 477sa.

Moreover, whether the party coordinated-expenditure limits are altered in any given instance will depend on a large number of highly conjectural variables: the party's candidate must face a wealthy opponent; the opponent must decide to spend a "personal funds amount" over a certain sum; the relative campaign funds available to the respective candidates must exceed a certain ratio; and a candidate who otherwise qualifies to benefit from increased party coordinated expenditures must request them. This string of variables confirms that the RNC appellants fail to meet the Article III requirement of injury that is "actual or imminent, not conjectural or hypothetical." *Whitmore* v. *Arkansas*, 495 U.S. 149, 155 (1990) (internal quotation marks and citation omitted); *see also Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 601 (1992).

III. The NRLC Appellants Fail To Raise Any Justiciable Or Substantial Question With Respect To BCRA Section 212

Like the McConnell appellants, the NRLC appellants seek to challenge what they maintain is a requirement in BCRA Section 212 that "advance notice" be given of independent expenditures. *See* NRLC J.S. Question Presented 5 and p. 22. As we have explained in our response to the McConnell and NRA jurisdictional statements, at pp. 3-5,

the FEC has unambiguously construed Section 212 *not* to require any such advance notice. Accordingly, as the district court concluded (*see* JSSA 130-34sa (per curiam)), there is no credible threat that Section 212 will be enforced against anyone in the manner that the NRLC appellants fear, and so any challenge to Section 212 on the ground that it unconstitutionally requires "advance notice" is clearly nonjusticiable and without merit.

IV. THE NRLC APPELLANTS FAIL TO RAISE ANY SUBSTANTIAL QUESTION WITH RESPECT TO THE GEOGRAPHIC SCOPE OF THE DISTRICT COURT'S INJUNCTIVE RELIEF

The NRLC appellants ask this Court to decide "[w]hether [the] District Court injunction should extend to activities outside the District of Columbia." NRLC J.S. Question Presented 6; *see also id.* at 22-24. That question presents no issue appropriate for this Court's consideration. The district court stayed its injunction on May 19, pending this Court's final disposition of the appeals from the district court's final judgment. On May 23, the Chief Justice denied the NRLC appellants' application to vacate the district court's stay. Thus, there is *no* injunction presently in effect, let alone one that is only being honored within the District of Columbia. This Court's final disposition of the appeals, of course, will have nationwide force. The question presented is thus plainly insubstantial.

V. THE NRLC APPELLANTS FAIL TO RAISE ANY SUBSTANTIAL QUESTION WITH RESPECT TO THE CONGRESSIONAL INTERVENORS' STANDING UNDER BCRA SECTION 403(b)

Finally, the NRLC appellants ask this Court to decide whether BCRA Section 403(b), which permits Members of Congress to intervene in any action brought to challenge the constitutionality of BCRA, violates Article III standing principles. *See* NLRC J.S. Question Presented 7 and pp. 24-

27.[3] The NRLC argues that a party who seeks to intervene as a defendant must establish Article III standing, and contends that the courts of appeals have reached conflicting conclusions on that point. That question, however, is not presented by this case, because the district court assumed that a party seeking to intervene as a defendant must establish Article III standing, and then unanimously concluded that the intervenors in this case had done so. *See* App., *infra*, 4a-6a.

In challenging the intervenors' standing, the NRLC errs in analogizing this case to *Raines* v. *Byrd*, 521 U.S. 811, 829 (1997), and similar cases involving the standing of legislators who sought to vindicate various institutional interests. *See* NRLC J.S. 26. As the district court correctly explained, the intervenors in this case "do not seek to vindicate a 'sponsorship' interest in the Act." App., *infra*, 7a. Rather, the intervenors have Article III standing as direct *individual* participants in the electoral process, with respect to the laws governing the processes by which they seek and retain their offices. Thus, "as opposed to members of the general public, [intervenors] have a concrete, direct, and personal stake—as candidates and potential candidates—in the outcome of a constitutional challenge to a law regulating the processes by which they may attain office." *Id.* at 6a.[4]

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[3] The NRLC appellants acknowledge that Section 403(b), by providing for intervention of right by Members of Congress, removes any prudential standing concerns that might otherwise exist. *See* NRLC J.S. 25; *see also Raines* v. *Byrd*, 521 U.S. 811, 820 n.3 (1997).

[4] *See also Buckley* v. *Valeo*, 424 U.S. 1, 7-8, 12 n.11 (1976) (per curiam); *Nixon* v. *Shrink Missouri Gov't PAC*, 528 U.S. 377, 383 (2000); *Vote Choice, Inc.* v. *DiStefano*, 4 F.3d 26, 37 (1st Cir. 1993) ("[A]n impact on the strategy and conduct of an office-seeker's political campaign constitutes an injury of a kind sufficient to confer standing."); *Meek* v. *Metropolitan Dade County*, 985 F.2d 1471 (11th Cir. 1993) (standing to intervene in defense of election law); *Marshall* v. *Meadows*, 921 F. Supp. 1490, 1492 (E.D. Va. 1996) (candidate standing to defend election law); *cf. Cook* v. *Gralike*, 531 U.S. 510, 531 (2001) (Rehnquist, C.J., concurring in the judgment) ("no one questions the standing" of candidates with respect to ballot-access provisions).

Moreover, it is far from clear how the NRLC appellants could benefit from their challenge to the intervenors' standing in this Court. Even if the NRLC appellants persuaded this Court that the intervenors lacked standing, that would not provide a basis for reversal or vacatur of any aspect of the district court's decision that was adverse to them, for they would still have to prevail on the merits against the Executive Branch defendants. The situation in this case is therefore closely analogous to that in *Buckley* v. *Valeo*, 424 U.S. 1, 12 (1976) (per curiam), in which this Court decided not to linger over questions of individual party standing given that "at least some" parties had standing with respect to each challenged statutory provision.

CONCLUSION

The Court should summarily dispose of the RNC and NRLC appellants' challenges to Sections 212, 214(b), 214(c), 304, 319, and 403(b). In all other respects, the Court should note probable jurisdiction of the appeals in these cases and set the cases for plenary review.

It is, moreover, highly ironic that the NRLC appellants would challenge the standing of the intervenor-appellees, given that two of the objecting appellants, Representative Mike Pence and Alabama Attorney General Bill Pryor, base their own standing on precisely the same kinds of interests in the electoral process. *See* McConnell, *et al.*, Second Amended Complaint ¶¶ 17, 18.

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JUNE 2003

APPENDIX

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, *et al.*,

Plaintiffs,

v.

Civ. No. 02-582
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

NRA, *et al.*,

Plaintiffs,

v.

Civ. No. 02-581
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

ECHOLS, *et al.*,

Plaintiffs,

v.

Civ. No. 02-633
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

CHAMBER OF COMMERCE
OF THE UNITED STATES, *et al.*,

Plaintiffs,

v. Civ. No. 02-751
(CKK, KLH, RJL)

FEDERAL ELECTION
COMMISSION, *et al.*,

Defendants.

NATIONAL ASSOCIATION OF
BROADCASTERS,

Plaintiffs,

v. Civ. No. 02-753
(CKK, KLH, RJL)

FEDERAL ELECTION
COMMISSION, *et al.*,

Defendants.

AFL-CIO, *et al.*,

Plaintiffs,

v. Civ. No. 02-754
(CKK, KLH, RJL)

FEDERAL ELECTION
COMMISSION, *et al.*,

Defendants.

CONGRESSMAN RON PAUL, *et al.*,

Plaintiffs,

v.

Civ. No. 02-781
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, *et al.*,

Defendants.

ORDER GRANTING MOTION TO INTERVENE
(May 3, 2002)

Pursuant to Rule 24(a)(1) of the Federal Rules of Civil Procedure and section 403(b) of the Bipartisan Campaign Reform Act of 2002 (BCRA or Act), Senators John McCain, Russell Feingold, Olympia Snowe and James Jeffords and Representatives Christopher Shays and Martin Meehan (movants) move to intervene in these consolidated actions to defend BCRA's constitutionality. While the defendants do not object to the motion, several of the plaintiffs (objectors)[1] oppose it on the ground that the movants "do not have the requisite Article III standing" to support intervention. Opp'n at 3 (capitalization altered). We disagree. Accordingly, and for the following reasons, the motion to intervene is granted.

[1] Specifically, Representative Mike Pence, Alabama Attorney General Bill Pryor, Libertarian National Committee, Inc., Alabama Republican Executive Committee, Libertarian Party of Illinois, DuPage Political Action Council, Jefferson County Republican Executive Committee, Christian Coalition of America, Inc., Club for Growth, Indiana Family Institute, National Right to Life Committee, Inc., National Right to Life Educational Trust Fund, National Right to Life Political Action Committee, Martin J. Connors and Barret Austin O'Brock oppose the movants' intervention.

Rule 24(a)(1) provides that "[u]pon timely application anyone shall be permitted to intervene in an action . . . when a statute of the United States confers an unconditional right to intervene." Fed. R. Civ. P. 24(a)(1). Section 403(b) of the Act, in turn, provides that

> [i]n any action in which the constitutionality of any provision of this Act or any amendment made by this Act is raised . . . any member of the House of Representatives . . . or Senate shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the constitutionality of the provision or amendment.

2 U.S.C. § 437h note. Because the plaintiffs have challenged numerous provisions of the Act on constitutional grounds, section 403(b) plainly confers upon each and every one of the movants an unconditional statutory right to intervene in the consolidated actions now before us.

The objectors argue that the standing inquiry does not end with the satisfaction of Rule 24(a)(1). Under Article III of the United States Constitution, our "judicial Power" extends only to live "Cases" or "Controversies." U.S. Const. art. III. The D.C. Circuit has long held that "because an intervenor participates on equal footing with the original parties to a suit, a movant for leave to intervene . . . must satisfy the same Article III standing requirements as original parties." *Bldg. & Constr. Trades Dep't v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994); *see S. Christian Leadership Conf. v. Kelley*, 747 F.2d 777, 779 (D.C. Cir. 1984); *see also Mausolf v. Babbitt*, 85 F.3d 1295, 1300 (8th Cir. 1996) ("An Article III case or controversy is one where all parties have standing, and a would-be intervenor, because he seeks to participate as a party, must have standing as well.")[2]

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[2] In *Diamond v. Charles*, 476 U.S. 54 (1986), the United States Supreme Court held that an intervenor seeking to continue its suit in the absence of the party on whose side intervention was permitted must demonstrate that it fulfills the standing

Building & Construction Trades and *Kelley* address the question of Article III standing under Rule 24(a)(2) as opposed to Rule 24(a)(1). To date, neither the Supreme Court nor the D.C. Circuit has specifically addressed whether an Article III standing analysis is as appropriate in the Rule 24(a)(1) context as it is in the Rule 24(a)(2) context. The movants suggest that "[t]he argument for a relaxed rule of standing where the intervenor has an unconditional statutory right to participate seems . . . stronger than the argument for relaxed standing in the (a)(2) context." Movants' Reply at 5 n.3. However, we see no need in this case to address that distinction or to resolve the question whether the movants must satisfy the constitutional requirements of standing—i.e., that they have suffered or will suffer "an injury in fact" which is "concrete and particularized," "actual or imminent," "fairly . . . trace[able] to the challenged action" and "redress[able] by a favorable decision," *Lujan v. Defenders of Wildlife*, 504 US. 555, 560-61 (1992) (internal quotations omitted)—because we believe, as discussed below, that the movants have satisfied those requirements in any event.

The movants allege that

> [a]s federal officeholders and candidates for, or potential candidates for, election to federal office, they are among those whose conduct the Act regulates, and among those whom the Act seeks to insulate from the actual or apparent corrupting influence of special interest money. They want to run in elections, participate in a political system, and serve in a government in which all participants

---

requirements of Article III. *See id.* at 68. Nonetheless, the Court reserved for another day the broader question of whether an intervenor must have Article III standing where the party on whose side intervention is sought remains in the litigation. *See id.* at 68-69. The circuits are split on that issue. *See Ruiz v. Estelle*, 161 F.3d 814, 831-32 (5th Cir. 1998) (D.C., Seventh and Eighth Circuits require intervenors to have Article III standing while Second, Fifth, Sixth, Ninth and Eleventh Circuits do not).

> comply with the reasonable contribution restrictions and other federal campaign finance regulations that the Act imposes in order to stop evasion and to prevent actual and apparent corruption. If any of the reforms embodied in the Act are struck down, . . . [the] movants will once again be forced to attempt to discharge their public responsibilities, raise money, and campaign in a system that [they believe to be] significantly corrupted by special-interest money.

Mem. in Supp. of Mot. to Intervene at 3-4; *see Lujan*, 504 U.S. at 561 ("At the pleading stage, general factual allegations of injury. . . may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." (internal quotations and alteration omitted)); 7C Charles Alan Wright et al., *Federal Practice and Procedure* § 1914, at 418 (2d ed. 1986) (intervention pleading "is construed liberally in favor of the pleader and the court will accept as true the well-pleaded allegations" therein). These allegations are sufficient to support Article III standing.

The objectors' contrary position that (1) the movants "have not shown that they have an interest distinct from that of every other citizen," Opp'n at 8; (2) the movants have no legally protected interest "as sponsors and supporters" of the Act or "in upholding an unconstitutional statute," *id* at 8, 10; and (3) any injury the movants suffer cannot be redressed by a favorable decision, *see id.* at 12, is, simply stated, without merit.

First, as opposed to members of the general public, the movants have a concrete, direct, and personal stake-as candidates and potential candidates—in the outcome of a constitutional challenge to a law regulating the processes by which they may attain office. *See Buchanan v. FEC*, 112 F. Supp. 2d 58, 65 (D.D.C. 2000) ("Precluding candidates from challenging [election] rules under the FECA would leave few others to do so . . . . [I]t is relatively self-evident that the people who have the most to gain and lose from the

criteria governing [the electoral process] are the candidates themselves."); *see also Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 37 (1st Cir. 1993) ("[A]n impact on the strategy and conduct of an office-seeker's political campaign constitutes an injury of a kind sufficient to confer standing." (citing *Buckley v. Valeo*, 424 U.S. 1, 12 & n.10 (1976) (per curiam))). The objectors have cited no case law to the contrary.

Second, notwithstanding the objectors' assertions, *see* Opp'n at 8-9, the movants do not seek to vindicate a "sponsorship" interest in the Act. Nor are they precluded from intervening to *defend* (rather than challenge) the Act. In arguing that "no litigant has a legally protected interest in upholding an unconstitutional statute," *id.* at 10, the objectors conflate the threshold issue of standing with the merits of the case and ignore the fact that the BCRA provisions the movants seek to defend are presumed constitutional until proven otherwise. *See United States v. Morrison*, 529 U.S. 598, 607 (2000) ("Due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds"). Moreover, a movant may intervene in support of government defendants where "it will be injured in fact by the setting aside of the government's action it seeks to defend," the "injury will have been caused by that invalidation" and "the injury would be prevented if the government action is upheld." *Am. Horse Prot. Ass'n v. Veneman*, 200 F.R.D. 153, 156 (D.D.C. 2001); *see also Meek v. Metro. Dade County*, 985 F.2d 1471, 1480 (11th Cir. 1993) (movants seeking to intervene in defense of "election system that governed their exercise of political power" sufficiently "alleged a tangible actual or prospective injury" under *Lujan*); *Marshall v. Meadows*, 921 F. Supp. 1490, 1492 (E. D. Va. 1996) (U.S. Senator seeking intervention to defend constitutionality of state election law permitted to intervene because he had "a vital interest in a procedure through which he [sought] election").

Finally, the injury the movants allege here—that they will be forced to raise money in a corrupt system *in the event the Act is struck down*—plainly would be redressed by a favorable decision *upholding* the Act's provisions. Accordingly, because it is clear from the face of the pleadings that the movants have an unconditional statutory right-and Article III standing—to seek such a decision, it is this 3rd day of May, 2002 hereby

ORDERED that the objectors' request for an oral hearing on the motion to intervene is denied, *see Sam Fox Publ'g Co. v. United States*, 366 U.S. 683, 693-94 (1961) (district court had discretion to decide motion to intervene without hearing when result was clear from face of application); and it is further

ORDERED that the motion to intervene is granted.

SO ORDERED.

KAREN LeCRAFT HENDERSON
United States Circuit Judge

COLLEEN KOLLAR-KOTELLY
United States District Judge

RICHARD J. LEON
United States District Judge

02-1797

Supreme Court, U.S.
FILED
JUN 4 2003
OFFICE OF THE CLERK

No. 02-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2002

REPUBLICAN NATIONAL COMMITTEE, ET AL.,
Appellants,

v.

FEDERAL ELECTION COMMISSION, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY IN SUPPORT OF JURISDICTIONAL STATEMENT

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ARGUMENT

On June 2, 2003 Intervenor-Appellees ("Intervenors") filed a response to the RNC Appellants' Jurisdictional Statement in which Intervenors sought summary dismissal or affirmance by this Court of the district court's holding that the challenges to BCRA Sections 214(b) and (c) (the Coordination Rulemaking Provisions) and BCRA Sections 304 and 319 (the "Millionaires Provisions") are nonjusticiable. The constitutional issues presented by the challenges to BCRA Sections 214(b), (c), 304 and 319 are too substantial and important to be summarily dismissed or affirmed without an opportunity for full and fair briefing of the issues. Further, with respect to Section 214, Intevenors' proposed alternative approach would deprive this Court from ever hearing the RNC Appellants' constitutional claims presented in this appeal.

Intervenors suggest that the Court should wait to consider RNC Appellants' challenge to Section 214 until after the FEC issues regulations defining coordination. But these regulations have already been issued. *See* 11 C.F.R. § 109.20-21 (2003). More to the point, the RNC Appellants challenge on constitutional grounds the *statutory* language that requires *any* FEC regulation to expand the definition of "coordination" to include situations without an agreement or formal collaboration. It deems RNC expenditures to be coordinated with candidates when they are in fact independent. In addition, it deems expenditures by non-candidate individuals and groups to be coordinated with the RNC when they are in fact independent. Thus, Section 214 requires that such non-candidate expenditures be treated as contributions to the RNC, even when they are in fact made independently. As Judge Henderson observed in dissent, "[Section] 214 will violate the First Amendment no matter what the [FEC] does, for no regulation it promulgates may depart . . . from the provision['s] plain text." Op. of

Henderson, J. at 394-95sa. At a minimum, the dispute between Judge Henderson and the other members of the district court confirms the existence of a substantial constitutional question that this Court can and should consider now.

Furthermore, Section 214 is merely one part of an interconnected statutory whole. For example, Section 213 requires that all political committees maintained by a national or state party be considered as one committee for the making of coordinated or independent expenditures. As Judge Henderson explained, the restrictions on political speech imposed by Section 214 are exacerbated by the unwarranted attribution required in Section 213. Op. of Henderson, J. at 396-97sa. Intervenors seek review of the district court decision unanimously striking down Section 213. In light of the interaction between the provisions, if the Court is to review one provision, it should review them both.

Finally, with regard to Section 214, Intervenors incorrectly suggest that the RNC Appellants can raise both their "constitutional and statutory challenges" under the Administrative Procedure Act after the FEC issues regulations. Intervenor Resp. at 3. To the contrary, Section 403 of BCRA vests *exclusive* jurisdiction over all constitutional challenges to BCRA in the three-judge panel of the district court. Thus, the RNC Appellants have brought their constitutional challenge to Section 214 in the only court where such a challenge can be made.

Intervenors also seek to avoid having to defend the Millionaire's Provisions on the erroneous ground that none of the RNC Appellants are harmed by the provisions and that they allegedly lack standing. To the contrary, the Millionaire's Provisions restrict the speech of political parties as well as candidates by requiring parties to spend less to support some similarly-situated candidates than others.

Intervenors suggest in response that the party can simply reduce its speech in some areas in order to treat all persons equally. Intervenor Resp. at 5. That is no answer, however, since any First Amendment challenge could be cured if the challenger would simply accept the restrictions being imposed. If the RNC fully exercises the statutory authority under BCRA, it will necessarily treat similarly situated candidates differently. Again, this challenge presents a substantial issue which warrants briefing and argument.

Congress intended questions regarding BCRA to be resolved expeditiously, and noting probable jurisdiction on all the challenged BCRA provisions is the way to satisfy this Congressional mandate. Failure to address these issues now will merely prolong the period of uncertainty about which Intervenors themselves complained when they sought a stay of the district court decision. *See* Intervenors' Reply to Certain Plaintiffs' Opposition to a Comprehensive Stay at 2. Indeed, Intervenors stand alone in their request for summary action. The Executive Branch appellees have acknowledged that "appellants' jurisdictional statement identifies substantial questions of federal law and that this Court should note probable jurisdiction over the appeal." *See* Executive Branch Resp. at 3. The Executive Branch appellees further stated that they were not seeking dismissal or summary affirmance of the district court's justiciability rulings in order to facilitate the expeditious review mandated by statute. *See* Executive Branch Resp. to McConnell Plaintiffs at 7.

CONCLUSION

For the foregoing reasons, Intervenors' request for dismissal or summary affirmance of the district court's decision on BCRA Sections 214(b) and (c), 304, and 319

should be denied, and the Court should note probable jurisdiction over all of the issues set forth in the RNC Appellants' Jurisdictional Statement.

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June 4, 2003

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REFER TO 02-1674, MCCONNELL V. FEDERAL ELECTION COMMITTEE, FOR DOCUMENTS LISTED ON DOCKET BUT NOT ON FICHE

Docket for 02-1733
No. 02-1733 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Right to Life Committee, Inc., et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1734
No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753
No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755
No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756
No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675
No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676
No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702
No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740

No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747

No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727

No. 02-1727 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Republican National Committee, et al., Appellants v. Federal Election Commission, et al. Docketed: May 28, 2003

REFER TO 02-1674, MCCONNELL V. FEDERAL ELECTION COMMITTEE, FOR DOCUMENTS LISTED ON DOCKET BUT NOT ON FICHE

Docket for 02-1733
No. 02-1733 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Right to Life Committee, Inc., et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1734
No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753
No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755
No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756
No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675
No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676
No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702
No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740

No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747

No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727

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Docket for 02-1734
No. 02-1734 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: American Civil Liberties Union, Appellant v. Federal Election Commission, et al. Docketed: May 29, 2003 Lower

Docket for 02-1753
No. 02-1753 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1755, 02-1756 Title: California Democratic Party, et al., Appellants v. Federal Election Commission, et al. Docketed: June 2, 1003

Docket for 02-1755
No. 02-1755 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1756 Title: American Federation of Labor and Congress of Industrial Organizations, et al., Appellants v. Federal Election

Docket for 02-1756
No. 02-1756 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755 Title: Chamber of Commerce of the United States, et al., Appellants v. Federal Election Commission, et al. Docketed:

Docket for 02-1675
No. 02-1675 Status: GRANTED Vide 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: National Rifle Association, et al., Appellants v. Federal Election Commission, et al. Docketed: May 15, 2003

Docket for 02-1676
No. 02-1676 Status: GRANTED Vide 02-1675, 02-1674, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Federal Election Commission, et al., Appellants v. Mitch McConnell, United States Senator, et al. Docketed: May

Docket for 02-1702
No. 02-1702 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1727, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: John McCain, United States Senator, et al., Appellants v. Mitch McConnell, United States Senator, et al.

Docket for 02-1740

No. 02-1740 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1747, 02-1753, 02-1755, 02-1756 Title: Victoria Jackson Gray Adams, et al., Appellants v. Federal Election Commission, et al. Docketed: May 30, 2003

Docket for 02-1747

No. 02-1747 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1727, 02-1733, 02-1734, 02-1740, 02-1753, 02-1755, 02-1756 Title: Ron Paul, United States Congressman, et al., Appellants v. Federal Election Commission, et al. Docketed: May

Docket for 02-1727

No. 02-1727 Status: GRANTED Vide 02-1675, 02-1674, 02-1676, 02-1702, 02-1733, 02-1734, 02-1740, 02-1747, 02-1753, 02-1755, 02-1756 Title: Republican National Committee, et al., Appellants v. Federal Election Commission, et al. Docketed: May 28, 2003